TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 82.

THE PEOPLE OF THE STATE OF NEW YORK, UPON THE RELATION OF THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

NATHAN L. MILLER, AS COMPTROLLER OF THE STATE OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

(19,445.)

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INDEX.

	Original.	Print.
Papers on appeal to court of appeals	*a*	1
Notice of application for an order for a writ of certiorari and for said writ	1	1
Decision of comptroller	2	2
Order for issuance of writ of certiorari	4	2
Writ of certiorari	6	3
Allowance of writ	8	4
Petition for writ	9	4
Bond	19	10
Return to writ of certiorari	23	12
Evidence before the comptroller	25	13
Testimony of F. H. Meeder	25	13
Exhibit 1—Statement of distribution of assets	34	19
2—Statement of distribution of assets	36	21
3—Statement of distribution of assets, &c	37	22
Testimony of F. H. Meeder	41	25

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 7, 1905.

	Original.	Print
Exhibit A—Statement of equipment for October 31, 1900..	62	3
B—Statement of mileage basis of the Vanderbilt lines for the year 1900	62	3
C—List of individual cars, by their numbers, as they pass back and forth from one company to another; report of the New York Central and Hudson River Railroad Company for the year ending October 31, 1900	63	3
Stipulation as to record	70	4
Order of appellate division	71	4
Affidavit of no opinion	73	4
Relator's notice of appeal to court of appeals	74	4
Stipulation as to record on appeal	75	4
Remittitur from court of appeals	76	4
Opinion of court of appeals	79	5
Opinion of court of appeals in case of N. Y. C. & H. R. R. R. Co. *vs.* Knight	81	5
Judgment on remittitur	93	5
Petition for writ of error	98	5
Bond on writ of error	108	6
Assignment of errors	112	6
Citation (copy)	124	7
Writ of error (copy)	126	7
Clerk's certificate	127	7

Print
38

38

a In the Court of Appeals.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of the New York Central and Hudson River Railroad Company
against
NATHAN L. MILLER, as Comptroller of the State of New York.

39
45
46
47
47
48
48
50

Papers on Appeal from Order.

Proceeding for 1901.

51
57
59

Ira A. Place, attorney for appellant, Grand Central station, borough of Manhattan, N. Y. city, N. Y.

John Cunneen, attorney-general, attorney for respondent, capitol, Albany, N. Y.

64
67
73
74
75

1 Notice of Application for an Order for a Writ of Certiorari and for Writ.

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of the New York Central and Hudson River Railroad Company
against
NATHAN L. MILLER, as Comptroller of the State of New York.

SIR: Please take notice that a motion will be made by and on behalf of the New York Central and Hudson River Railroad Company, at a special term of the supreme court in and for the county of Albany, to be held at the city hall in the city of Albany, N. Y., on the 26th day of September, 1903, at 10.30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order for a writ of certiorari, and also for a writ of certiorari, to be directed to you, to review the determination of the comptroller of the State of New York, dated August 10, 1903, a copy of which is hereto annexed, to be returnable according to law, and for
2 such other and further relief as may be proper.

Dated New York, September 2, 1903.

Yours, etc.,
IRA A. PLACE,
Attorney for Applicant, The New York Central and Hudson River Railroad Company, Room 417, Grand Central Station, Borough of Manhattan, New York City, N. Y.

To Hon. Nathan L Miller, comptroller of the State of New York, Albany, N. Y.

"STATE OF NEW YORK:

COMPTROLLER'S OFFICE,
ALBANY, Aug. 10th, 1903.

In the Matter of the Application of NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY for a Revision of Taxes Assessed Against it under Chapter 908, Laws of 1896, and the Acts Amendatory Thereof.

An application having been made by the above-named New York Central and Hudson River Railroad Co. for a revision and re-
3 settlement of the taxes assessed and determined against it by the comptroller of the State of New York, for the one year ending Oct. 31, 1901, and the said comptroller having heard proofs offered on behalf of the said New York Central & Hudson River R. R. Co. in support of said application, and after due consideration thereof, the comptroller does hereby determine that the assessment heretofore made against the said New York Central & Hudson River R. R. Co., for the sum of two hundred thirty-five thousand seven hundred fifty-five dollars, should be reduced to the sum of one hundred seventy-three thousand three hundred eighty-nine and 74/100 dollars; which said sum of one hundred seventy-three thousand three hundred eighty-nine and 74/100 dollars is hereby determined as the amount which said New York Central & Hudson River Railroad Co. is liable to pay under the provisions of chapter 908, Laws of 1896, and the acts amendatory thereof, for the one year ending Oct. 31, 1901, and the said company has been credited on the books of this department with the sum of $62,365.26.

NATHAN L. MILLER,
Comptroller."

4 At a special term of the supreme court, held in and for the county of Albany, at the county court house in the city of Albany, N. Y., on the 26th day of September, 1903.

Present: Hon. D. Cady Herrick, justice.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of the New York Central and Hudson River Railroad Company
against
NATHAN L. MILLER, as Comptroller of the State of New York.

Order for Issuance of Writ of Certiorari.

On reading and filing the petition verified and dated the 9th day of September, 1903, of the New York Central and Hudson River Railroad Company, and upon the undertaking heretofore filed by the said railroad company, pursuant to section 197 of the tax law, and upon the notice of this application duly served on the comptroller of the State of New York, and after hearing Harris & Rudd,

Esqrs., of counsel for the petitioner, and on motion of Ira A. Place, Esq., attorney for the petitioner, it is

Ordered, that a writ of certiorari do issue from and out of this court pursuant to the prayer of the petitioner, directed to Nathan L.
5 Miller, as comptroller of the State of New York, to review the decision and determination of the said comptroller mentioned and described in the petition, and the question involving the merits therein mentioned, both upon the law and the facts, which writ shall be returnable within twenty days after service thereof upon the said comptroller, at the office of the clerk of Albany county.

Enter.

JOHN FRANEY, Clerk.

6 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of the New York Central and Hudson River Railroad Company
against
NATHAN L. MILLER, as Comptroller of the State of New York.

Writ of Certiorari.

Whereas, we have been informed by the verified petition of the New York Central and Hudson River Railroad Company, dated and verified the 9th day of September, 1903, that certain proceedings have been had before the comptroller of the State of New York in a certain matter entitled "In the matter of the application of the New York Central and Hudson River Railroad Company for a revision and readjustment of the account heretofore audited and stated by the comptroller of the State of New York for taxes under section 182 of the tax law," for the year ending October 31st, 1901, upon the application of the said railroad company to revise and readjust an account theretofore audited and stated by the said comptroller of the State of New York for taxes to be paid by the said The New York Central and Hudson River Railroad Company under section 182 of the tax law, the petition upon which the said
7 application was made being verified March 7, 1902, and a hearing upon such application having been had on the 19th day of February, 1903, and the said comptroller having thereafter made his determination and sent written notice of his determination upon such application to the applicant, the petitioner herein, allowing in part and denying in part the application for revision or readjustment of the said account, and the said The New York Central and Hudson River Railroad Company having now made application to this court for a writ of certiorari to review, in so far as the said application was denied and refused, the said decision and determination of the said comptroller.

And we being willing for certain purposes to be certified of such proceedings, if any such were had, do hereby command and strictly enjoin Nathan L. Miller, as comptroller of the State of New York, that he certify and return all and singular the evidence before him on such application, and all the papers and proofs upon the original statement of such account and all proceedings thereon, and all his decisions and actions in the premises, with all the evidence, documents, reports, records and papers relating thereto in his possession, or under his control, submitted to or considered by him, concerning the said account and the grounds of his refusal to revise and readjust the same, as prayed for in the petition, within twenty days after the service upon him of this writ, at the office of the clerk of Albany county, under his proper hand, pursuant to the provisions of the tax law and the provisions of title II., of chapter 16 of the Code of Civil Procedure, so that our supreme court may further cause to
8 be done thereon what of right and according to law ought to be done, and let the defendant have then and there this writ.

Witness the Hon. D. Cady Herrick, justice of our honorable court, at the court house in the city of Albany, N. Y., this 26th day of September, 1903.

JOHN FRANEY, Clerk.

IRA A. PLACE,
Attorney for the Relator, Grand Central Station,
Borough of Manhattan, New York City, N. Y.

The above writ is hereby allowed this 26th day of September, 1903.

D. CADY HERRICK,
Justice Supreme Court.

9 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of the New York Central and Hudson River Railroad Company *against* NATHAN L. MILLER, as Comptroller of the State of New York. } Petition for Writ.

To the supreme court of the State of New York:

The petition of the New York Central and Hudson River Railroad Company respectfully shows:

I. This petitioner, The New York Central and Hudson River Railroad Company, is a domestic railroad corporation, having but one kind of capital stock, organized and existing under the laws of the State of New York, for steam surface railroad purposes, and is engaged in operating certain railroads owned or leased in the State of New York and certain railroads leased in other States, and was such railroad corporation during the year ending October 31, 1901.

II. The defendant, Nathan L. Miller, is and has been since December 30, 1901, the comptroller of the State of New York.

10 III. That on or before November fifteenth, 1901, this petitioner duly made a written report to the comptroller of the State of New York, as required by subdivision 1 of section 189 of the tax law of the State of New York, being chapter 908 of the Laws of 1896 of the State of New York.

IV. That the said report showed the condition of this petitioner at the close of its business on October 31st preceding, and stated the amount of its authorized capital stock to be $115,000,000; that the date of the payment of each dividend declared by it during the year ending with said 31st day of October was as follows: January 15, April 15, July 15, October 15, 1901; that the rate per centum of the said dividends was five per centum; that such dividends amounted to less than six per centum on the par value of the capital stock of this petitioner; that the entire amount of the capital of such corporation, this petitioner, was $345,079,038.31; and that the capital employed by such corporation, this petitioner, in this State during the year ending said October 31, 1901, was $215,452,749.95; and that the capital employed by such corporation, this petitioner, outside of the State of New York, during such year was $129,626,288.36; that is, the proportion or percentage of capital employed by it within this State was sixty two and forty-four one-hundredths (62 44/100) per cent. of the entire amount of its capital, and the proportion or percentage of capital employed by it outside of this State was thirty-seven and fifty-six one-hundredths (37 56/100) per cent. of the entire amount of its capital; and that therefore, from November 1, 1900, to October 31, 1901, both inclusive, $71,806,000 was such portion of the capital stock at par of such corporation, this petitioner, as the amount

11 of capital employed within this State bears to the entire capital of the corporation.

V. That subsequent to the said 15th day of October, 1901, the said comptroller audited and stated the account for taxes to be paid by this petitioner under section 182 of the tax law, and sent notice thereof to this petitioner.

VI. That the account so audited and stated was in words and figures following, to wit:

"COMPTROLLER'S OFFICE, ALBANY, N. Y.

The New York Central and Hudson River R. R. Co., Grand Central Sta., N. Y. C.

John Carstensen, Compt., in Account with the State of New York, Dr.

For tax on franchise of business, based on value of capital stock employed in New York State, per chapter 908, Laws of 1896, and acts amendatory thereof, for the year ending October 31, 1901, as per report filed:

Appraised value of capital stock, $157,170,000.00, tax 1½ mills..... $235,755.00

VII. That on or about the 7th day of March, 1902, and within one year from the time that the said account had been audited and stated, and notice thereof sent to this petitioner, this petitioner applied to the said comptroller to revise and readjust the said account and to have said account resettled by striking therefrom, or by crediting to the account of this petitioner, the sum of $128,046.00; that the said application was made by written
12 petition, duly verified on or about the 7th day of March, 1902, and entitled "In the matter of the application of the New York Central and Hudson River Railroad Company for a revision and readjustment of the account heretofore audited and stated by the comptroller of the State of New York for taxes under section 182 of the tax law; "that upon such application said comptroller, on or about the 10th day of March, 1902, granted a rehearing, and subsequently fixed the 19th day of February, 1903, as the day upon which the petitioner might be heard upon such application; that on the said 19th day of February, 1903, this petitioner duly appeared by its counsel before the Honorable Otto Kelsey, the deputy comptroller, representing the said comptroller, and gave testimony in support of said application; that upon said hearing it appeared from the revised and corrected figures that the entire amount of the capital of said corporation, this petitioner, was of the value and sum of $343,366,340.82, of which the amount of $215,205,465.70 and no more constituted its capital employed within this State during said tax year, and $128,160,875.12 was the amount of its capital employed outside of this State during said tax year; and thus that the proportion or percentage of its capital employed within this State was sixty-two and sixty-eight one-hundredths per cent. of its entire capital, and the proportion or percentage of its capital employed outside of this State was thirty-seven and thirty-two one-hundredths per cent. of its entire capital; that the average value of its capital stock during said tax year was $148.75 per share, showing the average value of its $115,000,000 of capital stock during said tax year to have been the sum of $171,062,500.00 and no more, of which sixty-two and sixty-eight one-hundredths per cent., to wit, $107,221,975.00 was
13 such portion of the value of the capital stock of such corporation, this petitioner, as the amount of its capital employed within this State bore to the entire capital of said corporation; that thereafter the said comptroller made his determination, and sent written notice of his determination upon the said application, to the applicant, this petitioner, the said determination being as follows:

"STATE OF NEW YORK:

COMPTROLLER'S OFFICE,
ALBANY, Aug. 10th, 1903.

In the Matter of the Application of NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY for a Revision of Taxes Assessed Against it under Chapter 908, Laws of 1896, and the Acts Amendatory Thereof.

An application having been made by the above-named New York Central & Hudson River Railroad Co., for a revision and resettlement of the taxes assessed and determined against it by the comptroller of the State of New York for the one year ending Oct. 31, 1901, and the said comptroller having heard the proofs offered on behalf of the said New York Central & Hudson River R. R. Co., in support of said application, and after due consideration thereof,
14 the comptroller does hereby determine that the assessment heretofore made against the said New York Central & Hudson River R. R. Co., for the sum of two hundred thirty-five thousand seven hundred fifty-five dollars, should be reduced to the sum of one hundred seventy-three thousand three hundred eighty-nine and 74/100 dollars; which said sum of one hundred seventy-three thousand three hundred eighty-nine and 74/100 dollars is hereby determined as the amount which said New York Central & Hudson River Railroad Co. is liable to pay under the provisions of chapter 908, Laws of 1896, and the acts amendatory thereof for the one year ending Oct. 31, 1901, and the said company has been credited on the books of this department with the sum of $62,365.26.

NATHAN L. MILLER,
Comptroller."

VIII. That in and by his determination upon the said application and resettlement and readjustment of the said tax at and as of the sum of $173,389.74, the said comptroller computed the same at one and one-half mills upon each dollar of a valuation of $115,593,160.00; that the said valuation of $115,593,160.00 bears the same relation and proportion to $171,062,500.00, the average value of the entire capital stock of such corporation, this petitioner, during said tax year, as the amount of $232,025,139.19 bears to $343,366,340.82, the amount of the entire capital of such corporation, this petitioner; that the said amount of $232,025,139.19 included and embraced entire the $16,079,369.25, the amount and value of the average portion of the rolling stock of said corporation, this petitioner, which was proven before the said comptroller to have been continuously employed outside of this State during the said tax year; that
15 this petitioner then insisted, and ever since has insisted and now insists, that the said tax of $173,389.74 upon the said $115,593,160.00 valuation of its said capital stock was erroneously and unlawfully assessed or imposed, and payment thereof could not

and cannot be lawfully demanded, and that the average portion of the average value of the capital stock of such corporation, this petitioner, throughout the said year which bore the same relation to the average value of the entire capital stock, as the amount of capital employed within this State bore to the entire capital of the corporation, was $107,221,975.00; and that upon that sum only could such taxes be levied or imposed at the rate of one and one-half mills, amounting to $160,832.96 and no more, and that there should be such resettlement of said account as would result in striking therefrom or crediting to the account of said petitioner any and all excess of that sum; and then insisted and has ever since insisted and now insists that such portion of the value of the capital stock of the said corporation. this petitioner, as bore the same relation to the total value of its entire capital stock during said tax year as the amount and value of the average portion of its rolling stock continuously employed outside of this State during said tax year, bore to its entire capital wheresoever employed, during said year, did not nor did any part thereof constitute any part of the amount of its capital stock employed within this State, and that no tax could be lawfully computed, assessed or imposed upon the basis of such said portion of its capital stock; and that whatsoever sum of tax was computed, assessed or imposed upon the basis of such said portion of its capital stock should be either stricken off or credited to the account of said corporation, this petitioner; that the basis of computation of
16 the said tax as resettled and readjusted by the said comptroller was as follows:

$$x : 171,062,500.00 :: 232,025,139.19 : 343,366,340.82.$$

In this statement $x = $115,593,160.00, and the tax thereon at 1½ mills is $173,389.74.

That the deduction from the said $232,025,139.19 of the $16,079,369.25, the amount and value of the average portion of the rolling stock of said corporation, this petitioner, proven before the said comptroller to have been continuously employed outside of this State during the said tax year, shows $215,945,769.94 and no more, as being the amount and value of the capital of said corporation, this petitioner, employed within this State during said tax year; that thus corrected the statement is as follows:

$$x : 171,062,500.00 :: 215,945,769.94 : 343,366,340.82.$$

In this statement $x = $107,582,540.51, and the tax thereon at 1½ mills is $161,373.81, thus showing the said corporation, this petitioner, entitled to further resettlement of the said tax by striking therefrom or crediting to this petitioner's account the further sum of $12,015.93.

IX. That heretofore this petitioner duly deposited with the treasurer of the State of New York the full amount of the taxes, percentage, interest and other charges audited and stated in the said account, and duly filed an undertaking with the said comp-

troller in an amount and with sureties approved by a justice of the supreme court of the State of New York, to the effect that if the said writ is dismissed, or the said determination is confirmed, this petitioner will pay any and all charges and costs which may accrue against it in the prosecution of the writ, including costs of all appeals, a copy of such undertaking being hereto annexed, and marked "Exhibit A."

17 X. That your petitioner is aggrieved by the said determination of the said comptroller. That no previous application for this writ has been made to any court or judge.

Wherefore, your petitioner, desiring to review both upon the law and the facts said determination of the said comptroller, upon such application made to him by your petitioner for a revision and resettlement of the said account as hereinabove set forth, prays that a writ of certiorari may issue out of the supreme court of the State of New York, directed to the said comptroller of the State of New York, commanding the said comptroller to certify and return at the office of the clerk of Albany county all and singular the evidence before him on such application, and all the papers and proofs upon the original statement of such account, and all the proceedings thereon and all his decisions and actions in the premises, with all the evidence, documents, reports, records and papers relating thereto in his possession or under his control, submitted to or considered by him, concerning the said account and the grounds for his refusal to revise and readjust the same, in and regarding the particulars hereinabove set forth, to the end that his said decisions and determinations may be reviewed and the said original and resettled account corrected and restated, and that this petitioner have such other and further relief as may be proper.

Dated New York, September 9, 1903.

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
By E. V. W. ROSSITER, Vice-President.

IRA A. PLACE,
Attorney for Petitioner, Grand Central Station,
Borough of Manhattan, New York City, N. Y.

18 STATE OF NEW YORK, }
County of New York, } ss.:

Edward L. Rossiter, being duly sworn, says: That he is an officer of The New York Central and Hudson River Railroad Company, the petitioner above named, to wit: the treasurer thereof; that the foregoing petition is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

E. L. ROSSITER.

Sworn to before me this 9th day of September, 1903.
ALBERT B. QUENCER,
Notary Public (No. 1), New York County.

19 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of the New York Central and Hudson River Railroad Company
against
NATHAN L. MILLER, as Comptroller of the State of New York. } Copy.

Whereas, the above named, The New York Central and Hudson River Railroad Company, heretofore, on or about the 7th day of March, 1902, applied to the comptroller of the State of New York to revise and readjust the account heretofore audited and stated by the said comptroller, imposing a tax upon the said The New York Central and Hudson River Railroad Company for the year ending October 31st, 1901, under section 182 of the tax law, and to have said account resettled by striking therefrom, or by crediting to the account of the said railroad company, the sum of one hundred and twenty-eight thousand and forty-six dollars ($128,046.00), and the said comptroller having thereafter, a hearing having been made upon the said application, made his determination, allowing a credit to the said company on the books of the department of the sum of sixty-two thousand three hundred sixty-five and 26/100 ($62,365.26) dollars, and

20 Whereas, the said The New York Central and Hudson River Railroad Company is dissatisfied and aggrieved by the said determination and intends to review the said determination by writ of certiorari, and desires to file an undertaking with the said comptroller as required by section 197 of the tax law.

Now, therefore, the National Surety Company, a corporation duly authorized by the laws of the State of New York to execute surety bonds, having an office and principal place of business at No. 346 Broadway, borough of Manhattan, city of New York, does hereby undertake that if the said writ of certiorari, which may be granted upon the application of the said The New York Central and Hudson River Railroad Company to review the said determination, be dismissed, or the determination of the comptroller be confirmed, the said The New York Central and Hudson River Railroad Company will pay all costs and charges which may accrue against it in the prosecution of the said writ, including the cost of all appeals, not exceeding the sum of five hundred dollars ($500).

Dated, New York, September 5th, 1903.

NATIONAL SURETY COMPANY,
[L. S.] By JOEL RATHBONE,
Res. Vice-President.

Attest:
RICHARD J. MORIARTY,
Res. Ass't Secretary.

STATE OF NEW YORK, }
County of New York, } ss:

On this 5th day of Sept., 1903, before me personally appeared Joel Rathbone, res. vice-president of the National Surety Company, with whom I am personally acquainted, who, being by me duly sworn, said that he resides in the county of New York; that
21 he is the res. vice-president of the National Surety Company, the corporation described in and which executed the within instrument; that he knows the corporate seal of said company; that the seal affixed to the within instrument is such corporate seal; that it was affixed by order of the board of directors of said company, and that he signed said instrument as res. vice-president of said company by like authority; and that the liabilities of said company do not exceed its assets, as ascertained in the manner provided in section 3, chapter 720 of New York Session Laws of 1893. And the said Joel Rathbone further said that he is acquainted with Richard J. Moriarty, and knows him to be the res. ass't secretary of said company; that the signature of the said Richard J. Moriarty subscribed to the said instrument is in the genuine handwriting of the said Richard J. Moriarty, and was thereto subscribed by the like order of the said board of directors, and in the presence of him, the said res. vice-president.

EDITH BALDWIN,
Notary Public in the County of Kings, No. 122.

Certificate filed in New York, Westchester and Richmond counties.

Copy of By-Law.

Be it remembered, that at a regular meeting of the board of directors of the National Surety Company, duly called and held on the 6th day of February, 1900, a quorum being present, the following by-law was adopted:

"Article XIII. SEC. 1. *Signatures Required.*—All bonds, recogni-
" zances, contracts of indemnity and other writings obligatory
22 " in the nature thereof, shall be signed by the president, the
" vice-president, the second vice-president, a resident vice-presi-
" dent, or an attorney in fact, and, except when signed by an attorney
" in fact, shall have the seal of the company affixed thereto, duly at-
" tested by the secretary, an assistant secretary or a resident assistant
" secretary. The vice-president, second vice-president and resident
" vice-presidents shall each have authority to sign such instruments
" whether the president be absent or incapacitated or not; and the as-
" sistant secretaries and resident assistant secretaries shall each have
" authority to seal and attest such instruments, whether the secretary
" be absent or incapacitated or not. All such instruments executed
" as herein provided shall be as binding upon the company as if the
" same were signed by the president, duly sealed and attested by the
" secretary."

STATE OF NEW YORK, }
County of New York, } ss:

I, Richard J. Moriarty, res. ass't secretary of the National Surety Company, have compared the foregoing copy of by-law with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original by-law.

Given under my hand and seal of the said company this 5th day of Sept., 1903.

RICHARD J. MORIARTY,
[L. S.] Res. Ass't Secretary.

23 Return to Writ of Certiorari.

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE NEW YORK Central and Hudson River Railroad Company
vs.
NATHAN L. MILLER, as Comptroller of the State of New York.

Nathan L. Miller, the above named respondent, hereby makes the following return to the writ of certiorari heretofore issued herein:

1st. He admits the allegations contained in paragraphs 1, 2, 3, 5, 6 and 9 of the petition herein.

2d. He admits the following allegations contained in paragraph 7 of the petition herein: "That on or about the 7th day of March, 1902, and within one year from the time that the said account had been audited and stated, and notice thereof sent to this petitioner, this petitioner applied to the said comptroller to revise and readjust the said account and to have said account resettled by striking therefrom, or by crediting to the account of this petitioner, the sum of $128,046.00; that the said application was made by written petition, duly verified on or about the 7th day of March, 1902, and entitled "In the matter of the application of the New York Cen-
24 tral and Hudson River Railroad Company for a revision and readjustment of the account heretofore audited and stated by the comptroller of the State of New York for taxes under section 182 of the tax law;" that upon such application said comptroller, on or about the 10th day of March, 1902, granted a rehearing, and subsequently fixed the 19th day of February, 1903, as the day upon which the petitioner might be heard upon such application; that on the said 19th day of February, 1903, this petitioner duly appeared by its counsel before the Honorable Otto Kelsey, the deputy comptroller, representing the said comptroller, and gave testimony in support of the said application."

3d. He does not admit any other of the allegations contained in

said petition, except as the same are established by the proof taken herein.

4th. He further returns that the decision of the comptroller was duly and regularly made, and that the said relator is not justly aggrieved thereby.

5th. He further returns the proceedings had before him, in addition to those set out in and annexed to the petition herein, and annexed hereto are all of the papers and proceedings before the comptroller which are not annexed to the petition.

In witness whereof, the comptroller has hereunto set his hand and official seal this 20th day of October, 1903.

NATHAN L. MILLER,
[L. S.] By OTTO KELSEY,
Deputy Comptroller.

25 STATE OF NEW YORK:

Comptroller's Office.

In the Matter of the Application of THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY for a Revision and Readjustment of Taxes Assessed under the Provisions of Chapter 908, Laws of 1896, and the Acts Amendatory Thereof for the Year Ending October 31st, 1901.

Rehearing held at the office of the State comptroller February 19th, 1903, before Hon. Otto Kelsey, deputy State comptroller.

Appearances: Thomas Emery, as counsel.

F. H. MEEDER, being duly sworn, testified as follows:

It is agreed, that such of the testimony taken in the hearing this day, had upon the tax of 1900 as either party may deem pertinent to the issues upon this hearing may be deemed part of and incorporated in the record of this hearing, together with the objections and exceptions.

Statement of assets October 31st, 1901, marked Exhibit 1, for identification.

26 By Mr. EMERY:

Q. Mr. Meeder, examine the paper headed "Distribution of assets, October 31st, 1901," and marked Exhibit 1 for identification, and state whether or not it was made up by you, or under your direction and supervision?

A. This statement was made up under my supervision and I believe the same to be correct so far as the calculations are concerned.

Q. The figures opposite the various items mean the values, they do?

A. Yes, sir.

Q. Under the headings "In New York State" and "Outside of New York State," respectively, appear opposite the items passenger cars and freight cars divisions under each heading; upon what basis are those—what is the basis of those divisions of value?

A. Those divisions are made upon a car mileage basis.

Q. Car mileage divided with reference to what?

A. With reference to the number of miles made by New York Central cars in the State of New York and outside the State of New York; the percentage that each bears to the total car mileage in and out of the State having been applied to the total valuation of the cars, and the result shown in the column "In New York State" or "Outside New York State;" the item "Stocks of other companies (A)" with the figures in line following it is made up of the figures shown in the paper marked A, attached to and constituting part of this Exhibit 1, for examination.

Q. And what do you say, then, as to whether this statement, Exhibit 1 and the addenda A thereto attached, does or does not correctly show the condition of the New York Central and Hudson River Railroad Company with reference to its capital as of
27 that date, computed upon the basis therein shown?

A. I believe it is correct and computed upon the basis as shown in the statement.

By Mr. MERRILL:

Q. Mr. Meeder, do you know anything about it except as to whether the computations are correct or not, as far as the figures are concerned?

A. Yes, sir, I do.

Q. Well, what do you know?

A. That would take me several months to tell you, but I know that the figures that appear there are taken from the books of the company.

By COUNSEL:

Q. Does or does not this statement entitled "Distribution of assets, October 31st, 1901," marked Exhibit 1 for identification, correctly set forth the property constituting assets of the New York Central and Hudson River Railroad Company at that date, and correctly the amounts of each?

A. Yes, sir.

Q. Under the heading "Outside of New York," and opposite the words "stocks of other companies," appear the figures $111,972,292.96—of what is that composed?

A. Of the items shown on table A, attached to the exhibit.

Q. In the table marked "A," of this same exhibit, opposite the words "M. D. Transportation Company" follow the figures 89 per cent. ditto of $2,597,400, and in the column headed "Outside the State," opposite this, appears $2,311,686.00—how is that division ascertained and upon what is it based?

A. Based upon advice from the office of the M. D. T. Company.

Q. Advice to what effect?

A. Merely to the effect that 89 per cent. of their equipment was employed outside the State.

28 Q. In the body of the exhibit, under the heading "Outside of New York," and opposite the word "McGee's," appear the figures $9,212.21—what is McGee's connection and where is it?

A. That is a short line of road, practically a spur from the Pittsburg and Eastern railroad, which was paid for by the New York Central, and which is located entirely within the State of Pennsylvania.

Q. Under the same head and opposite the words "fuel and supplies," appear the figures $100,000.00—what does that mean; what is that based upon?

A. That is an approximation of the amount of coal and other supplies upon the line of the company's roads in States other than New York.

Exhibit 1 for identification offered in evidence, for the purpose of proving what it purports *fo* show, subject to such explanation as witness has given.

Mr. MERRILL: I object to the admission of so much of the paper as has to do with the determination of the percentage of the Merchants' Despatch Transportation Company investment in this State, and the division of rolling stock within and without the State, and the employment of the capital stock of the New York Central Railroad Company, as set forth by those items in the statement.

Objection as to those items sustained, and balance of statement received and marked "Ex. 1."

Exception as to exclusion.

COUNSEL: I offer to prove by the items of Exhibit 1, objected to and excluded, and by other evidence, that the figures, with reference to and opposite the words "passenger cars" and "freight cars" show the percentum and relative value of such equipment within

29 the State of New York, and the percentage and value thereof employed outside of the State of New York, during the tax year in question, and that of the $2,597,400.00 capital stock of the Merchants' Despatch Transportation Company owned by the New York Central and Hudson River Railroad Company 89 per cent. thereof was employed outside of the State of New York during said year, both of said first computations being based upon the car mileage upon the New York Central lines or within the State and off the New York Central lines outside the State, and the latter, to wit, Merchants' Despatch Transportation Company, being based upon equipment mileage within and without the State.

Mr. MERRILL: Objected to on the ground that the hypothesis is false and erroneous.

Objection sustained.

Exception taken.

By COUNSEL:

Q. Examine the paper marked Exhibit 2 for identification, and state whether it was made by you or under your direction?

A. This statement was made under my direction and supervision.

Q. And what have you to say as to its correctness?

A. I believe it to be a correct statement.

Q. Upon what basis is the division of equipment, as set forth in it?

A. Upon a road-mileage basis.

Q. According to the number of miles of road operated by the New York Central and Hudson River Railroad Company within and outside the State respectively?

A. Yes, sir.

Q. The statements, other than those of the detail of equipment, are simply the totals taken from the Exhibit 1, are they?

A. Yes, sir, they are identical with Exhibit Number One.

Statement offered in evidence.

Objected to by Mr. Merrill on the ground that it is incompetent, irrelevant and immaterial as to ground of division of equipment on basis of road mileage.

Objection sustained.

Exception taken.

By COUNSEL:

Q. Examine the paper marked Exhibit 3 for identification, and say by whom and under whose supervision and direction it was made?

A. This statement was made under my direction and supervision.

Q. Except as regards equipment this is the same as Exhibit 1, is it not?

A. Yes, sir.

Q. And as between the equipment employed in the State and that employed without the State, upon what are the figures based in that regard?

A. Upon this statement we have made a division of the mileage of the freight cars, showing in one group the mileage of the freight cars in New York State and on Vanderbilt lines, whether in or out of the State; in another group the mileage of freight cars outside of New York State and on roads other than Vanderbilt lines we have regarded the percentage which the first group bears to the total of the two groups as the percentage to use in determining the valuation of freight cars in New York State.

Q. And as thus computed what is the amount respectively?

A. The valuation of freight cars employed in New York State employed upon this basis is $18,865,225.67, and outside of the State $8,902,253.98.

Statement offered in evidence.

31 Objected to by Mr. Merrill to that part which relates to division of rolling stock within and without the State on the ground that it is based upon a false hypothesis, and does not show what percentage of the rolling stock of the New York Central and Hudson River Railroad Company is continuously and exclusively without the State of New York.

Objection sustained. Exception taken.

By COUNSEL:

Q. Referring to the Exhibit 1 for identification and upon the basis of computation of the division of the equipment there set out, what is the aggregate of equipment which upon that basis would appear employed outside the State of New York?

A. $9,578,552.44.

Q. Examine the papers marked Exhibit 4 for identification, purporting to show car movements of cars numbered respectively 41,278, 41,038, 59,578, 63,158, 63,123, 63,176, 64,431, 61,834, 14,035, 27,941, 18,236, and state what the fact is as to whether or not those respective statements were prepared under your supervision and are correctly transcribed from the car accountant's records?

A. These were prepared under my direction and I believe they have been correctly transcribed from the records kept by the car accountant.

COUNSEL: I offer this in evidence for the purpose of showing the movements of the respective cars therein mentioned as illustrative of the manner in which the cars owned by the New York Central and Hudson River Railroad Company were employed on lines other than those owned, or in any wise subject to its control during the tax year in question.

32 Objected to by Mr. Merrill as incompetent because they do not show that the cars were continuously and exclusively without the State.

Objection sustained. Exception.

By COUNSEL:

Q. What do you say, Mr. Meeder, as to whether the same methods in this regard prevailed during the year ending October 31st, 1901, as did at the times covered by the various car movements shown in this Exhibit 4?

A. That is to say, do you mean that cars of New York Central were similarly distributed over other roads during that period?

Q. Yes?

A. Yes.

By Mr. MERRILL:

Q. Now, Mr. Meeder, wherever you have used the term car mile-

age in making the calculation which you have presented here to-day, what did you mean by car mileage?

A. I meant the number of miles actually run by freight cars.

Q. Is it not a fact that cars frequently are standing under demurrage?

A. Yes, but in a case of that kind no mileage can be recorded.

Q. Although the cars would be earning —?

A. Not at all; no mileage unless moving.

Q. You don't get demurrage for cars standing on side, &c.?

A. We do on our own roads get demurrage for cars—so-called car service charges, but the movement of a car during car mileage was entirely separate from that.

Q. Now, do you know anything personally about business of the Merchants' Despatch Transportation Company?

A. Yes, I know it is a fast freight line, and that it is supposed to offer special facilities for freight.

Q. Do you know over what lines its cars run?

33 A. Well, I am not positive; I believe that it runs over the lines of what is known as the Vanderbilt system.

Q. Do you know where its shops are located?

A. I believe it has repair shops at or near Buffalo.

Q. Well, do you know whether any of their cars are continuously and exclusively used without the State?

A. No, sir; I have no means at hand of ascertaining that.

Q. Then the statements which have been submitted to-day with relation to distribution of their assets, so far as it relates to car mileage, is based entirely upon the statements of some officer or agent of the Merchants' Despatch Transportation Company?

A. Yes, sir.

Q. Are any of these cars which you say were employed without the State, as shown in Exhibit 4, employed by the New York Central Railroad Company without the State?

A. To the best of my knowledge they are not.

Applicant requests that the comptroller grant an adjournment of the hearing of this matter for such reasonable time as may be necessary to enable it to produce evidence as to the amount or proportion of the capital of the Merchants' Despatch Transportation Company which is exclusively and continuously employed without the State of New York during the tax year in question and such other matters as the amount of capital stock invested otherwise than in cars located within the State of New York, whether such investments consist of real estate or personal property.

Adjournment is granted to a Monday afternoon or Friday morning on or before March 15th, notice of at least three days to be given to the comptroller before appearance.

34 EXHIBIT 1 FOR IDENTIFICATION.

EXHIBIT 1 (WITH EXCEPTIONS).

Distribution of Assets.

October 31st, 1901.

	In New York State.	Outside New York.	Total.
Cost of road	$140,766,967.40		$140,766,967.40
Passenger locomotives	1,862,772.67		
Freight "	7,522,745.00		
Passenger cars 84.54% in	4,891,315.28		
" " 15.46% out		$912,771.87	
Freight " 45.38% in	2,000,882.27		
" " 54.62% out		15,166,597.38	
Work "	368,291.86		
Passenger boats	106,393.50		
Freight "	1,611,403.57		45,203,173.40
Total road & equipment	$169,890,771.55	$16,079,369.25	$185,970,140.80
Advances for construction.			
New York & Harlem R. R	$5,783,521.16		
West Shore R. R.	84,283.67		
Gouverneur & Oswegatchie R. R.	23,351.50		
New York & Putnam R. R.	47,126.68		
Beech Creek R. R.	261,076.07		
Pine Creek railway	200,034.72		
Boston & Albany R. R. (E. Bost. Imp.)	238,665.77		6,638,039.57
	$6,638,039.57		$6,638,039.57
Stocks of other companies (A)	$9,302,649.81	$111,972,292.96	$121,274,942.77
Bonds of other companies	4,391,411.52		4,391,411.52
Temporary assets.			
Cash on hand	$5,185,755.33		$5,185,755.33
Loans	10,000.00		10,000.00
Traffic balances receivable	4,362,620.34		4,362,620.34
Miscellaneous bills	2,139,960.43		2,139,960.43
Bills receivable	216,980.66		216,980.66
	$11,915,316.76		$11,915,316.76
35 Ownership in other lines, real estate, etc.			
Real estate not used in operation of road	$1,491,283.84		$1,491,283.84
Property purchased from B. & A. R. R.	1,970,039.95		1,970,039.95
Hudson River Bridge Co	2,256,363.36		2,256,363.36
Genesee Falls R. R.	35,717.43		35,717.43
N. Y. C. Niagara River R. R.	28,100.00		28,100.00
Niagara Falls & La Salle R. R.	363.35		363.35
Buffalo, Thousand Island & Portland R. R	140,500.00		140,500.00
Buffalo, Erie Basin R. R.	4.55		4.55
Toronto, Ham. & Buffalo Ry.	38,129.94		38,129.94
Troy Union R. R.	5,965.00		5,965.00
Clearfield Bit. Coal corporation	394,895.11		394,895.11
McGee's connection		9,212.91	9,212.91
Albany gas house	22,210.53		22,210.53
	$6,383,573.06	9,212.91	$6,392,785.97

Bonds bought for account sinking fund	$1,506,905.68	.....	$1,506,905.68
Fuel and supplies	3,824,588.67	$100,000.00	3,924,588.67
Improvements and investments carried temporarily in suspense account	1,352,209.08	.....	1,352,209.08
	$215,205,465.70	$128,160,875.12	$343,366,340.82
	62.68%	37.32%	100%

Stocks of Other Companies.

		Outside State.
D. A. V. & P. 483/90.6 — out of the State of	$156,912.38	$83,651.96
M. D. Transportation Co. 89% do. of	2,597,400.36	2,311,686.00
Morris Run Coal Mining Co	.....	900,000.00
N. J. Junction R. R	.....	100,000.00
Pine Creek railway	.....	100.00
West Shore & Ontario Terminal Co	.....	2,900.00
Jersey City & Bayonne R. R	.....	13,500.00
N. J. Shore Line R. R	.....	31,000.00
Beech Creek R. R	.....	1,125.00
Lake Shore & Michigan Southern railway 1342.32/1413.44 — of	90,578,400.00	86,020,770.53
36 Michigan Central R. R	.....	19,336,445.00
Clearfield Bit. Coal corporation	.....	200.00
Penns. & Western R. R	.....	11,983.61
Chest. Creek R. R	.....	6,000.00
West Branch Coal Co	.....	25,000.00
Pittsburgh & Eastern R. R	.....	150,000.00
Chesapeake & Ohio Ry	.....	1,638,454.79
N. Y., N. H. & H. R. R. 1952.07/2008.08 — of	$1,050,000.00	1,020,713.07
Pittsfield & North Adams R. R	.....	72,200.00
Boston Terminal Company	.....	100,000.00
Chester & Becket R. R	.....	500.00
The Windsor Co	.....	563.00
Beech Creek Extension R. R	.....	145,500.00
Beech Creek Coal & Coke Co	.....	1,000.00
		$111,972,292.96
Total stocks of other companies		121,274,942.77
Less outside New York State		111,972,292.96
In New York State		$9,302,649.81

EXHIBIT 2 FOR IDENTIFICATION.

Distribution of Assets.

October 31st, 1901.

	In New York State.	Outside New York.	Total.
Cost of road	$140,766,967.40	.....	$140,766,967.40
Passenger locomotives	1,468,051.14	394,721.53	1,862,772.67
Freight "	5,928,675.33	1,594,069.67	7,522,745.00
Passenger cars	4,653,011.08	1,251,076.07	5,904,087.15
Freight "	21,883,550.71	5,883,928.94	27,767,479.65
Work "	290,250.82	78,041.04	368,291.86
Passenger boats	131,134.72	35,258.78	166,393.50
Freight "	1,269,947.16	341,456.41	1,611,403.57
Cost of equipment*.	$35,624,620 96	$9,578,552.44	$45,293,173.40

* Division of equipment as based upon road mileage, in New York State. 2,540.24 78.81%
Outside New York State. 682.97 21.19%
Total road mileage. 3,223.21 100%

37

	In New York State.	Outside New York State.	Total.
Advances for construction (for detail see statement No. 1)	6,638,039.57	.....	6,638,039.57
Stocks of other companies (for detail see statement No. 1)	9,302,649.81	111,972,292.96	121,274,942.77
Bonds of other companies	4,391,411.52	.....	4,391,411.52
Temporary assets (for detail see statement No. 1)	11,915,316.76	.....	11,915,316.76
Ownership of other lines, real estate, etc. (for detail see statement No. 1)	6,382,573.06	9,212.91	6,392,785.97
Bonds bought for account sinking fund	1,506,905.68	.....	1,506,905.68
Fuel and supplies	3,824,588.67	100,000.00	3,924,588.67
Improvements and investments carried temporarily in suspense	1,352,209.08	.....	1,352,209.08
	$221,706,282.51 64.57%	$121,660,058.31 35.43%	$343,366.340.82 100%

EXHIBIT 3 FOR IDENTIFICATION.

Distribution of Assets.

October 31st, 1901.

	In New York State.	Outside New York State.	Total.
Cost of road	$140,766,967.40		$140,766,967.40
Passenger locomotives	1,862,772.67		
Freight	7,522,745.00		
Passenger cars	5,904,087.15		
Freight cars	18,865,225.67	$8,902,253.98	
Work cars	368,291.86		
Passenger boats	166,393.50		
Freight boats	1,611,403.57		45,203,173.40
Cost of equipment*	36,300,919.42	8,902,253.98	45,203,173.40

* Division of freight equipment based upon mileage of freight cars outside of New York State on roads other than Vanderbilt lines compared with total freight-car mileage both in and out of State.

Mileage of freight cars in New York State and out of State but on Vanderbilt lines	360,624,454	67.94%
Mileage of freight cars outside of New York State on roads other than Vanderbilt lines	170,145,549	32.06%
Total freight-car mileage	530,770,003	100%

38	In New York State.	Outside New York State.	Total.
Advance for construction (for detail see statement No. 1)	6,638,039.57		6,638,039.57
Stocks of other companies (for detail see statement No. 1)	9,302,649.81	111,972,292.96	121,274,942.77
Bonds of other companies	4,391,411.52		4,391,411.52
Temporary assets (for detail see statement No. 1)	11,915,316.76		11,915,316.76
Ownership of other lines, real estate, etc. (for detail see statement No. 1)	6,383,573.06	9,212.91	6,392.785.97
Bonds bought for account, sinking fund	1,506,905.68		1,506,905.68
Fuel and supplies	3,824,588.67	100,000.00	3,924,588.67
Improvements and investments carried temporarily in suspense	1,352,209.08		1,352,209.08
	$222,382,580.98	$120,983,759.85	$343,366,340.82
	64.77%	35.23%	100%

Report of the New York Central & Hudson River Railroad Company for the Year Ending the Thirty-first Day of October, A. D. 1901, Made Pursuant to Provisions of § 182, Chap. 908, Laws of 1896. (Give post-office address of company, street and No.)

GRAND CENTRAL STATION, Dec. 1, 1901.

To the comptroller of the State of New York:

Agreeably to law, as treasurer of the above company, I make the following report, viz:

1. This company began business in the State of New York, in the month of November, 1869.

2. The last report made by this company to the comptroller of the State of New York under the provisions of the above act was made for the year ending October 31st, 1900.

3. Value of real estate and of interest or interests in real property in New York State, and where situated. Cannot give.

4. Organized under the laws of the State of New York.

5. Date of organization of the company, November 1, 1869.

39

6. Total authorized capital of company...	$115,000,000.00
7. Whole number of shares of stock authorized.....	1,150,000
8. Number of shares of stock issued.....	1,150,000
9. Par value of each share.....	$100.00
10. Amount paid into the treasury of the company on each share. (See answers to Nos. 8 and 9.)	
11. *a*. Amount of capital paid in cash or property.....	See answers to Nos. 8 & 9.
b. Amount of capital paid in good will...	
c. Amount of capital paid in patents or copyrights.....	
12. Amount of capital upon which dividends were declared.....	$115,000,000.00
13. Date of each dividend paid, Jan. 15, April 15, July 15, and Oct. 15, 1901.	
14. Amount of each dividend declared.....	1,437,500.00
15. Rate per cent. per annum of dividends—five per cent. (5 %).	
16. The business transacted by this company in the State of New York for the year ending October 31, 1901, was as follows: (Give nature of business and how carried on.) Transportation.	
17. And such business was carried on at the following-named place or places: (Give street and number). Very numerous places.	
18. Capital stock employed in New York State...	71,806,000.00
(Preceding line need not be filled out by companies whose capital is all employed in this State.)	

40 19. If not in New York State, where and how employed? Property permanently employed and invested outside of the State.

20. Highest price of sales of stock during the year aforesaid, 170.

21. Lowest price of sales of stock during the year aforesaid, 127½.

G. S. PRINCE, Treasurer.

STATE OF NEW YORK, County of New York, } ss.:

On this 14th day of December, A. D. 1901, personally appeared before me a notary public in and for the county of New York, Geo. S. Prince, treasurer of the above-named company, who, being duly sworn according to law, did depose and say that the foregoing report is just, true and correct according as the accounts stand in the books of the company, and that includes all dividends, whether cash, stock, scrip, or of any other character or description, declared by said company during the year ending on the thirty-first day of October, A. D. 190–.

G. S. PRINCE, Treasurer.

Sworn to and subscribed before me the day and year aforesaid.

LOUIS BENDER,
Notary Public, 218, N. Y. County.

Remarks.

The capital stock employed outside of New York State has been determined by taking such proportions thereof as the capital outside of the State bear- to the total capital of the company in and out of New York State, viz., 37.56/100 % of $115,000,000.00.

41 Recapitulation.

Distribution of Capital, October 31st, 1901.

	In N. Y. State.	Outside N. Y. State.	Total.
Cost of road and equipment	$169,890,771.55	$16,079,369.25	$185,970,140.80
Lessor companies	6,638,039.57	.....	6,638,039.57
Stocks of other companies	9,302,649.81	111,972,292.96	121,274,942.77
Bonds of other companies	4,391,411.52	.....	4,391,411.52
Cash and cash assets	12,043,303.79	939,774.38	12,983,078.17
Ownership in other lines, real estate, etc.	7,855,079.36	534,851.77	8,389,931.13
Fuel and supplies	3,824,588.67	100,000.00	3,924,588.67
Sinking fund	1,506,905.68	.....	1,506,905.68
	$215,452,749.95 (62.44%)	$129,626,288.36 (37.56%)	$345,079,038.31

The comptroller, deeming the evidence taken before him on February 19th, 1903, upon the questions submitted upon the remittitur with relation to the taxation of the capital stock of the New York Central and Hudson River Railroad Company, for the year ending October 31st, 1900, to be pertinent to the issues upon this hearing, has, in accordance with the agreement made upon such hearing, made such testimony a part of the record of this hearing.

Which said testimony is as follows:

F. H. MEEDER appeared, and being duly sworn, testified as follows:

By Mr. EMERY:

Mr. Meeder, you may state where you live, where, how employed, and in what capacity?

A. Live in South Orange, New Jersey; employed as chief clerk in the office of the auditor of the New York Central and Hudson River Railroad Company.

Q. At the Grand Central station in New York city?

A. Yes, sir.

42 Q. Had you to do with the making up of the computations and figures for the return of the capital employed by the company in this State for the year ending October 1st, 1900?

A. Yes, sir.

Q. And in that capacity were you and are you familiar with the manner and place of use and employment of the rolling stock and equipment of the company?

A. Yes, sir.

Statement offered in evidence.

Objected to by Mr. Merrill in the form in which it is as incompetent.

By COUNSEL: I would suggest that it be identified, and I ask the preliminary questions.

Mr. MERRILL: Objected to on the general ground that under the remittitur the comptroller is only authorized to take into consideration evidence which shows the value of the rolling stock of the New York Central and Hudson River Railroad Company which is continuously and permanently without the State of New York and not to consider any testimony with relation to wheelage basis or mileage basis.

Statement received and marked Exhibit A, for identification.

Q. Did you make up the computations and statements shown upon the paper Exhibit A for identification, or were they made under your supervision?

A. Yes, sir.

Q. And what have you to say as to the correctness or incorrectness of the statements and figures as therein contained?

A. I believe that the division of the valuation of the company's

equipment is a correct one, using the company's road mileage in and out of New York State as a basis.

Q. That is, do you or do you not mean the road mileage
43 operated by the New York Central and Hudson River Railroad Company directly?

A. I mean such mileage operated directly.

Exhibit A for identification offered in evidence.

Objected to by Mr. Merrill on the ground that it is not permissible and is incompetent under the remittitur.

By COUNSEL: I will state ground under which I deem it to be receivable, admissible and proper to be received, even though Mr. Merrill were technically and absolutely correct; that is, referring to the opinion which comes down with the remittitur, it shows substantially this state of affairs; the opinion shows that the view which the court has of the record as it stood was that the use of the company's rolling stock outside of the State, off of its own road, consisted merely of the accomplishment of the shipment upon which the company started the car to and upon their so-called Vanderbilt or New York Central lines, to wit—the Lake Shore, Michigan Central, the Big Four, popularly called, and thereupon the cars were forthwith or presently reloaded and returned to the New York Central Company upon its line. Now, upon that view the court conceived that these cars were to be regarded as stock employed within New York State within the meaning of the statute. Now, in that connection no showing was made of the fact that any part of the company's line was operated—mileage was outside of the State of New York—nor was there any showing in that case either one way or the other that this rolling stock went in these Vanderbilt lines and was held of it. In view of that condition of affairs we offer this in evidence to show what the actual state of affairs was.

44 By Mr. KELSEY:

Q. That is, to determine how much outside and how much in?

A. That is to be regarded how much employed outside of the State and how much inside the State and for that purpose we offer this paper showing division of equipment of the company, showing first the total valuation of the equipment of the company in its various classifications and then the proportion of that value divided as per road mileage operated by the company within and outside the State.

Mr. MERRILL: It is contended that under the order of the court the only thing that we can take into consideration is the cars which are actually and permanently and continuously without the State. They are to be accepted as property without the State and otherwise than that they are to be construed as within the State. There is no ground, I insist, under the remittitur for taking a wheelage basis which the court distinctly turned down in the case which it had before it; if there is no ground for taking wheelage basis there is sub-

stantially the same reason why a mileage basis should be accepted. The wording of the remittitur in relation to this is as follows—"In view of the fact that there is no express finding by the comptroller that none of the relator's rolling stock was used exclusively outside of the State, I think it advisable that the proceedings should be remitted to the comptroller, to the end that further evidence may be taken upon the subject in case it should be claimed that some portion of the relator's rolling stock was used continuously outside of the State, and if it should be found that such was the fact, the amount thereof should be deducted and the order of the ap-
45 pellate division and that of the comptroller should be modified accordingly, without costs to either party."

Now, Mr. Comptroller, I contend that under this remittitur the only evidence which the comptroller is authorized to take in this matter is such as is in harmony with and along the lines indicated in the words quoted; that is, such evidence that will show what the value was of the rolling stock of the New York Central and Hudson River Railroad Company, and that was used exclusively and continuously outside of the State of New York during the year in question.

By COUNSEL: My claim is that, viewing the remittitur in the line of the opinion, that this is what fairly tends to establish those facts regarding the words continuously out of the State in their reasonable and ordinary sense, and so we offer that for the purpose of showing that, in view of this road mileage being the proportion shown without the State, that that proportion of equipment is to be regarded as having its situs without the State and being continuously without the State within the fair meaning of the statute prescribing this tax.

Mr. MERRILL: It is contended further on the part of the comptroller that all the evidence was before the court, and the comptroller in the case decided by the court and concerning which this remittitur was handed down, showing the wheelage of these cars without the State and within the State, and it is contended that the mileage basis is no more just than the wheelage basis, and they wouldn't, either one of them, determine fairly what cars were exclusively and continuously without the State.

46 By COUNSEL: I submit statement of equipment for October 31st, 1900.

Exhibit A for identification is received as Exhibit A, conditionally, the comptroller reserving the right to exclude it as evidence.

Q. Now, Mr. Meeder, the same year for the mileage basis off the Vanderbilt lines?

Statement produced, offered in evidence and marked Exhibit B for identification.

Q. Now, Mr. Meeder, examine the paper marked Exhibit B for

identification, and state whether it was prepared and made up by you, or under your supervision and direction?

A. This statement was prepared under my direction and supervision.

Q. And what have you to state as to its correctness as to statements and computations?

A. I believe the computations as shown upon this exhibit to be correct.

Q. And the statements contained in it to which the computations refer?

A. Yes sir.

Statement offered in evidence.

Objected to on the ground that it is incompetent, irrelevant and immaterial, and cannot be entertained under the conditions of the remittitur.

By COUNSEL: I claim for this that it exhibits the proportion of the rolling stock of the company that was continuously employed both outside the State of New York and off the New York Central lines and the lines controlled by the New York Central.

Mr. MERRILL: I object to it on the ground that it doesn't show anything of that character, but shows the result of a computation which in result is how many miles of road cars were operated on outside of New York State and how many miles of road cars
47 are operated on in New York State, and how many cars during the year were on those two divisions of mileage.

By COUNSEL:

Q. Mr. Meeder, in this statement marked Exhibit B for indentification, Mr. Meeder, the terms Vanderbilt lines are used—please state to what roads those words have reference.

A. The Lake Shore and Michigan Southern railway, the Michigan Central railroad, Cleveland, Cincinnati, Chicago and St. Louis railway, Lake Erie & Western R. R., N. Y., Chicago & St. Louis R. R., Pittsburg and Lake Erie railroad, and such lines as are controlled through ownership by those that I have mentioned.

By COUNSEL: Now, I offer this in evidence for the purpose of going further than the remittitur would require, to wit, showing the proportion of this equipment continuously employed outside of the State, but further restricting it to such; the dividing between the equipment on the one hand used within the State or on the New York Central operated lines, whether in or out of the State or upon the Vanderbilt lines as the witness has just designated without, and upon the other hand the continuous employment and use of it upon lines entirely foreign to the New York Central Company. The last figures show the amount and proportion entirely off all these lines that I have named, as well as entirely outside of the State.

By Mr. MERRILL:

Q. Mr. Meeder, are you prepared to swear that any car or percentage of the cars and locomotives mentioned in that statement were continuously and also exclusively used without New York State?

48 A. No, sir, I am not prepared to swear to the number so employed, but, so far as locomotives are concerned, I think comparatively few were so employed without the State.

Q. Now, Mr. Meeder, the remittitur calls for two concurrent conditions—one that this rolling stock shall be continuously employed without the State and the other is that it shall be exclusively employed without the State owned by this corporation, and I say it is incumbent upon this corporation to show to the comptroller how much, if any, of that rolling stock is not only continuously but exclusively employed without the State, and that no other evidence is competent.

Same excluded; exception taken.

By COUNSEL: I have here a list of number of car movements, as they are termed—that is, a showing of the individual cars by their number as they pass back and forth from one company to another, which I desire to have identified.

Objected to by Mr. Merrill, on the ground that it is incompetent, immaterial and irrelevant; that it doesn't show that those cars were exclusively and continuously employed without the State. Received as Exhibit C for identification.

By COUNSEL:

Q. Examine the paper marked Exhibit C for identification, Mr. Meeder, and state whether it was prepared under your direction and supervision?

A. Yes, sir, it was so prepared.

Q. And what have you to say as to its being correctly transcribed from the records of the movements of the cars?

A. I believe it to be a correct transcript from the records.

Q. What it means is that freight car number 27941 passed

49 from the possession of one railroad company to another railroad and at the dates named and at the dates specified in the statement?

A. Yes, sir.

Same offered in evidence. I offer to show by this that car number 27941 went from the New York Central and Hudson River railroad to the Michigan Central railroad on June 12th, 1902; that it passed from the possession of the Michigan Central railroad to the Chicago, Rock Island and Pacific railroad on June 14th, 1902, and from that date on passed from hand to hand from one company to another at the dates shown until November 25th, 1902, when it was still in the hands of the Chicago, Rock Island and Pacific, during which, more than five months, it was never in the possession of the New York

Central and Hudson River Railroad Company or of any of the so-called Vanderbilt or New York Central lines.

Mr. MERRILL: We object to it on the ground that it does not satisfy the two concurrent conditions laid down in the remittitur, and furthermore, that the whole transaction transpired after the close of the taxing year ending October 31st, 1900.

Same excluded.

By COUNSEL:

Q. Having in mind, Mr. Meeder, the history of the movement of car number 27941, as shown in the Exhibit C for identification, to which your attention has been called, what have you to say as to whether that is or is not fairly illustrative of the movement of vast numbers of the freight cars of the New York Central and Hudson River Railroad Company during the year ending October
50 31st, 1900, as regards their movement on other than so-called Vanderbilt lines?

A. I believe that this illustration of the movement of car 27941, while showing dates subsequent to October 31st, 1900, is an illustration of what did occur within the year ending October 31st, 1900, as regards numerous individual cars belonging to the New York Central and Hudson River Railroad Company; that is to say, that the records of the car accountant would show the delivery of New York Central and Hudson River Railroad Company's cars to other lines outside of New York State, and that they were not returned to the line of the New York Central for a considerable period of time.

Q. And what have you to say, Mr. Meeder, as to whether or not the mileage of freight cars outside New York State on roads other than Vanderbilt lines, 176,511,181, and the per centum, 32.68, is based essentially and largely upon car movements within that year, of which those shown upon Exhibit C for identification is illustrative?

A. To the best of my knowledge and belief, this total is mainly made up of individual car movements, such as illustrated in the table for number 27941.

COUNSEL: I now offer Exhibit C for identification as Exhibit C.

Objected to by Mr. Merrill as immaterial, incompetent and irrelevant.

Excluded. Exception taken.

COUNSEL: In the light of this further evidence I now renew the offer of Exhibit B for identification, to be included as Exhibit B.

Same objection.

Excluded. Exception taken.

Mr. MERRILL: This Exhibit B for identification is also objected to, further, on the ground that it shows exactly the same
51 method of procedure that was before the court in relation to rolling stock before; that is to say, wheelage, and which was rejected by the court.

By COUNSEL: In response to that the applicant's contention is that the paper is not subject to the objection interposed, because it was not merely the wheelage basis that the court treated as objectionable, but the wheelage basis which it deemed to be involved in the mere shipment from the New York Central railroad proper to points on their lines known as Vanderbilt lines, and then reloading the car back from such so-called Vanderbilt lines to the New York Central, whereas this division of mileage entirely discards the thing that the court thus treated as objectionable. That is to say, we are here claiming as exempt the proportion used on other than Vanderbilt lines, which ground of exemption was not brought before the court at all, so it could not have been passed upon by them.

Mr. MERRILL:

Q. Mr. Meeder, isn't it a fact that during all the time that cars of the New York Central Railroad Company and which were in transit out of the State on other lines, that there were cars of other lines also in the hands of the New York Central Railroad Company in the State of New York?

COUNSEL: I object to that inquiry upon the ground that it is irrelevant, immaterial and incompetent, because we are taxable on our capital employed in the State and not on capital of other companies.

Mr. MERRILL: I think this is pertinent in showing that the New York Central railroad had in lieu of its own property outside of the State property of other companies and had in use their property as though it were its own.

Objection sustained.

52 Mr. MERRILL: Mr. Comptroller I want to state that the purpose of making this inquiry was to show that such a condition of affairs did exist.

Mr. MERRILL:

Q. Mr. Meeder, is it not a fact that on much of the mileage of the New York Central Railroad Company in New York State there was more cars employed per mile than there is upon the mileage of the roads located without the State, proportionately?

A. I am not prepared to answer that question positively from my own knowledge.

Q. Mr. Meeder, is it not a fact that upon a wheelage basis a car operated outside the State of New York would wheel many more miles upon the average than it would in doing business that was local to the State of New York?

A. Not necessarily.

Q. Isn't it a fact, whether it was necessarily so or not? For instance, a car loaded at New York city with a car-load of eggs to go to Chicago, even if that car were returned loaded immediately, would travel several times as many miles in going, from New York

to Chicago and back again outside of the State as it would within the State?

A. Not if it went by the Lake Shore road, for example; it would make about half the distance in New York State and half the distance out.

Q. Suppose the car went still further west, to St. Louis, then?

A. It would make a greater mileage outside of New York provided it returned to New York again.

Q. How did you get the averages in Exhibit B for identification—did you, as a matter of fact, get those by taking a certain number of freight cars, or was it made up generally from the general records of the company and not upon averages?

53 A. The total freight car mileage shown on Exhibit B, showing the miles run by cars both in and out of New York State, was obtained from the records of the car accountant; the mileage of freight cars outside of New York State on roads *rather* than the Vanderbilt lines was obtained from the same source; the per cent. which this latter figure bears to the former is 32.68; this percentage was applied to the total valuation of the freight cars and gave the results shown on Exhibit B as valuation outside of New York.

Q. Now, Mr. Meeder, is it not possible to determine from the records of the New York Central and Hudson River Railroad Company whether there were any cars which did not come into and were not employed by New York Central Railroad Company in New York State during the year in question?

A. If the records of the car accountant are preserved for that period I am of the opinion that it might be determined, but that it would incur a vast amount of labor.

Q. Mr. Meeder, does the New York Central and Hudson River Railroad Company, as a corporation, operate any of these so-called Vanderbilt lines without the State?

A. No, sir.

Q. Are not these corporations, all of them, the possessors of rolling stock of their own?

A. Yes, sir.

Q. Does not the rolling stock of these companies come into State as rolling stock of New York Central goes out of State?

A. Yes, sir; you mean in the same manner.

Q. Yes.

A. Yes.

Q. Mr. Meeder, do you know what the percentage of mileage would have been in this State if, in making the calculation which you made in Exhibit B for identification, you had taken as out of

54 the State the mileage of freight cars in and out of the State of the so-called Vanderbilt line?

A. You mean——

Q. As a matter of fact, if the Vanderbilt lines located without the State had been treated as other lines without the State are treated

in that computation, would not the percentage of mileage of freight cars in New York State have been very much larger?

A. If the mileage of the cars upon the Vanderbilt system, so called, were also considered as out of New York State upon Exhibit B for identification, the percentage of value of cars shown as in New York State would be much less.

Q. Now, what would be the result, taking the same basis of mileage of freight cars outside of New York State?

A. That would be much greater.

Q. Now, Mr. Meeder, in arriving at that conclusion you took into consideration the cars owned by the Lake Shore, Michigan Central and other so-called Vanderbilt lines which were located without the State, did you not?

A. No, sir.

Q. Would that be true absolutely of New York Central and Hudson River Railroad Company's cars?

A. This statement covers only cars owned by New York Central and Hudson River Railroad Company, and no other.

Q. Now, then, will you state for the comptroller what the value was of the locomotives and other rolling stock of the New York Central and Hudson River Railroad Company which was continuously and exclusively without the State of New York?

Objected to by Mr. Emery, because it is incompetent, irrelevant and immaterial, and is calling for the very conclusion that the comptroller is to reach by his determination of this case upon the evidence.

Objection overruled. Exception.

55 A. I cannot tell from any information I have of the equipment so employed continuously and exclusively outside of the State during the year except upon an average basis.

Q. Would not the records that tell you what the wheelage was also show whether such cars were in or without the State or not?

A. As I have already stated, the car accountant's records, if preserved, so far as cars are concerned, would probably show that information.

Q. Those records were in existence when you made up these tabulated statements, were they not?

A. They were, presumably.

Q. If they were not in existence how could you have made up these tabulated statements?

A. I am speaking now of the individual car records—records of mileage totals might be in existence whether individual car movement records were or not.

Mr. MERRILL: I think the comptroller will ask you to furnish a statement showing what cars and other rolling stock were continuously and exclusively without the State of New York during the year ending October 31st, 1900.

COUNSEL: Do you mean by that individual cars?

Mr. MERRILL: I mean that the comptroller wants an absolute statement, if it can be determined by the New York Central and Hudson River Railroad Company, as to what cars and other rolling stock it had continuously and exclusively without New York State.

Mr. KELSEY: Is it a fact that every car that the Central owns comes back?

COUNSEL: It comes back when we can get it back; to follow out each individual car would be practically a denial of justice to require any such thing.

56 By Mr. MERRILL:

Q. Mr. Meeder, do you know whether any of the cars are permanently and exclusively without the State?

A. I have before me a statement which shows the movement of car 14035, which went to the Lake Shore and Michigan Southern railway upon December 20th, 1901, and was continuously off the line of the New York Central until January 4th, 1903, a period of over one year.

Q. Now, Mr. Meeder, have you any way of ascertaining what portion of the rolling stock of the New York Central and Hudson River Railroad Company would be so located all that year, without the State of New York, or of making a fair approximation of it?

A. The labor of following the movement of each individual car would be very great; and I may state as an indication of what that labor means, the going through the records to pick out these individual cases which were picked out at random, consumed several days of laborious tracing through all the car accountant's books.

Q. Were there any other cars picked out except those which you have presented to-day?

A. None other than those which we have here to-day; the fairest approximation I believe to be the car mileage of wheelage basis which shows actual performance of equipment.

Q. Does that show the number continuously and exclusively without the State at all or have any relation to it, Mr. Meeder?

A. These figures do not indicate individual cars, but show simply the total of miles made by the cars.

Mr. KELSEY:

Q. This computation does not take as a basis any number of specific cars that were traced and found absent for any length of time?

57 A. No, sir; the mileage of cars in and out of the State is arrived at in the following method: We receive from other railroads records of the number of miles made by our cars upon other lines, but they don't give us the number of individual cars. Their reports to us will simply show—your cars made during the month so-and-so upon our line so many miles; that might be ten or it might be fifty cars. We assemble together all these miles made

upon other roads, and then divide that total between the miles made by cars on other roads in New York State and on other roads out of New York State.

By Mr. MERRILL:

Q. Are those cars supposed to be in the course of returning home when they are making that mileage—are they supposed to be?

A. No, sir. It is a notorious fact that many foreign roads—that is, foreign to the New York Central—would seize every available car of other lines they could get for the conduct of their own business, and in many instances that would account for equipment being off the line for any length of time. I may say in connection that the reports of mileage made by foreign roads to the New York Central, that since July 1st last this has been discontinued for what is known as the per diem system; the compensation for use of other than owned cars has been put in effect, and few roads now compute the mileage of cars other than their own.

By COUNSEL: I will now renew offer of this "Exhibit B" for identification, in the light of the cross-examination, and in support of such offer I suggest that it now appears that the evidence offered is the best evidence which the nature of the case, in any fair or reasonable view, demands.

Objected to by Mr. Merrill on the ground that it isn't the
58 evidence to establish the facts called for by the remittitur, and that the evidence submitted in no way shows what, if any, portion of the rolling stock of the New York Central and Hudson River Railroad Company is either continuously, exclusively, or both continuously and exclusively, without the State of New York.

Objection sustained. Exception taken.

Report of the New York Central & Hudson River Railroad Company for the year ending the thirty-first day of October, A. D. 1900, made pursuant to provisions of § 182, chap. 908, Laws of 1896. (Give post-office address of company, street and No.)

GRAND CENTRAL STATION, November 30, 1900.

To the comptroller of the State of New York:

Agreeably to law, as treasurer of the above company, I make the following report, viz:

1. This company began business in the State of New York in the month of November, 1869.

2. The last report made by this company to the comptroller of the State of New York under the provisions of the above act was made for the year ending October 31st, 1899.

3. Value of real estate and of interest or interests in real property in New York State, and where situated—Cannot give.

4. Organized under the laws of the State of New York.

5. Date of organization of the company—November 1, 1869.
59 6. Total authorized capital of company—$115,000,000.
7. Whole number of shares of stock authorized—1,150,000.
8. Number of shares of stock issued—1,150,000.
9. Par value of each share—$100.
10. Amount paid into the treasury of the company on each share—(See answers to Nos. 8 and 9).
11. *a*. Amount of capital paid in cash or property, $—.
b. Amount of capital paid in goodwill, $—.
c. Amount of capital paid in patents or copyrights, $—.
} See answers to Nos. 8 & 9.
12. Amount of capital upon which dividends were declared—
$100,000,000 before April 1, 1900.
$115,000,000 after " " "
13. Date of each dividend payable—Jan. 15, Ap'l 16, July 16, Oct. 16, 1900.
14. Amount of each dividend declared—
$1,250,000 Jan. and April.
$1,437,500 July and October.
15. Rate per cent. per annum of dividends—Five per cent.
16. The business transacted by this company in the State of New York for the year ending October 31st, 1900, was as follows, viz: (Give nature of business and how carried on)—Transportation.
17. And such business was carried on at the following named place or places: (Give street and number)—Very numerous places.
18. Capital stock employed in New York State—$60,370,000. (Preceding line need not be filled out prior to March by companies whose capital is all employed —— 31, 1900, in this State.)
60 19. If not in New York State, where and how employed—$69,425,500 from April 1, 1900.
20. Highest price of sales of stock during the year aforesaid—139⅝.
21. Lowest price of sales of stock during the year aforesaid—120.

G. S. PRINCE, Treasurer.

STATE OF NEW YORK, }
County of New York, } *ss*:

On this fifth day of December, A. D. 1900, personally appeared before me, a notary public in and for the county of New York, George S. Prince, treasurer of the above-named company, who, being duly sworn according to law, did depose and say, that the foregoing report is just, true and correct, according as the accounts stand in the books of the company, and that includes all dividends, whether cash, stock, script, or of any other character or description, declared by said company during the year ending on the thirty-first day of October, A. D. 1900.

G. S. PRINCE, Treasurer.

Sworn to and subscribed before me, the day and year aforesaid.
J. P. McMAHON,
Notary Public (39), N. Y. Co.

Remarks.

The capital stock employed outside of New York State has been determined by taking such proportion thereof as the assets outside of the State bear to the total assets of the company in and out of New York State, viz: $39^{63}/_{100}$% of $100,000,000 from Nov. 1, 1899, to March 31, 1900; and $39^{63}/_{100}$% of $115,000,000 from April 1, 1900, to October 31, 1900.

61 Distribution of Assets, October 31st, 1900.

	In New York State.	Outside of New York State.	Total assets.
Cost of road and equipment	$166,074,130.15	$15,230,186.06	$181,304,316.21
Hudson River bridges, Albany	1,905,878.36		1,905,878.36
Advances for lessor companies	5,715,997.91	944,293.07	6,660,290.98
Stocks of other companies	9,055,764.16	117,503,817.73	126,559,581.89
Bonds of other companies	4,080,411.52		4,080,411.52
Cash and cash assets	8,847,030.28	10,000.00	8,857,030.28
Ownership in other lines, real estate, etc.	3,717,033.57	521,785.07	4,238,818.64
Fuel and supplies	3,992,485.63	100,000.00	4,092,485.63
Sinking fund	1,198,843.18		1,198,843.18
	$204,587,574.76 (60 37/100%)	$134,310,081.93 (39 63/100%)	$338,897,656.69 (100%)

Lines Leased.

Beech Creek railroad.
Carthage & Adirondack Railway Company.
Carthage, Watertown & Sackets Harbor Railroad Company.
Dunkirk, Allegheny Valley & Pittsburg Railroad Company.
Fall Brook Railway Company.
Gouverneur & Oswegatchie Railroad Company.
Mohawk & Malone Railway Company.
New Jersey Junction Railroad Company.
New York & Harlem Railroad Company.
New York & Putnam Railroad Company.
Niagara Falls Branch Railroad Company.
Oswego & Rome Railroad Company.
Pine Creek Railway Company.
Rome, Waterton & Ogdensburg Railroad Company.
Spuyten Duyvil & Port Morris Railroad Company.
Syracuse, Geneva & Corning Railway Company.
Tivoli Hollow Railroad Company.
Troy & Greenbush Railroad Association.
Utica & Black River Railroad Company.
West Shore Railroad Company.

62 EXHIBIT A FOR IDENTIFICATION.

EXHIBIT A CONDITIONALLY.

Equipment, October 31st, 1900.

	In New York State.	Outside New York State.	Total.
Passenger locomotives	$1,566,172.89	$217,623.11	$1,783,796.00
Freight "	6,486,532.30	901,317.70	7,387,850.00
Passenger cars	4,643,650.64	645,245.30	5,288,895.94
Freight "	24,506,043.17	3,405,167.73	27,911,210.90
Work "	267,153.39	37,121.54	304,274.93
Passenger boats	94,845.95	13,179.05	108,025.00
Freight "	1,276,626.47	177,390.01	1,454,016.48
Cost of equipment	$38,841,024.81	$5,397,044.44	$44,238,069.25

Division of equipment based upon road mileage,		
In New York State	2,483.61	87.80%
Outside " " "	345.07	12.20%
Total road mileage	2,828.68	100%

EXHIBIT B FOR IDENTIFICATION.

Equipment, October 31st, 1900.

	In New York State.	Outside New York State.	Total.
Passenger locomotives	$1,783,796.00		
Freight "	7,387,850.00		
Passenger cars	5,288,895.94		
Freight cars	18,789,827.18	$9,121,383.72	
Work cars	304,274.93		
Passenger boats	108,025.00		
Freight boats	1,454,016.48		$44,238,069.25
	$35,116,685.53	$9,121,383.72	$44,238,069.25

Division of Freight Equipment Based upon Mileage of Freight Cars Outside of New York State on Roads Other Than Vanderbilt Lines Compared with Total Freight Car Mileage Both in and out of State.

Mileage of freight cars in New York State and out of State, but on Vanderbilt lines	363,563,540	67.32%
Mileage of freight cars outside New York State on roads other than Vanderbilt lines	176,511,181	32.68%
Total freight car mileage	540,074,721	100%

63 EXHIBIT 4 AND EXHIBIT C FOR IDENTIFICATION.

New York Central & Hudson River Railroad Co.

NEW YORK, Jan. 16th, 1903....190–.

DEAR SIR: Below please find movements of N Y C car number 41279 from C. H. EWINGS, Car Acc't.

From	Train.	Date.	Time.	To	L. or E.	Date.	Time.	Con.
N. Y. Central.....		4/19		Mich. Central.....		4/19		
Mich. Central		5/10		L. S. & M. S.....		5/10		
L. S. & M. S.....		6/6		Vandalia.....		6/6		
Vandalia		6/13		L. S. & M. S		6/13		
L. S. & M. S.....		6/24		Pere Marquette.....		6/24		
Pere Marquette....		7/16		Mich. Central		7/16		
Mich. Central		7/18		Pere Marquette.....		7/18		
Pere Marquette....		7/20		Mich. Central		7/20		
Mich. Central		9/21		Penn. Company		9/21		
Penn. Company ...		10/17		L. S. & M. S		10/17		
L. S. & M. S.		10/31		Pitts. & Lake Erie..		10/31		
P. & Lake Erie		12/8		Penn. R. R..... ..		12/8		
Penn. R. R		12/9		Penn. Company....		12/9		
Penn. Company ...		12/12		Erie		12/12		
Erie		12/17		Clev., Cinn., Chic. & St. L.		12/17		

New York Central & Hudson River Railroad Co.

NEW YORK, January 16th, 1903. 190–.

DEAR SIR: Below please find movements of N Y C car number 41038 from C. H. EWINGS, Car Acc't.

From	Train.	Date.	Time.	To	L. or E.	Date.	Time.	Con.
N. Y. Central.....		4/28		L. S. & M. S		4/28		
L. S. & M. S.....		5/8		Lake Erie & West..		5/8		
L. E. & Western ...		5/20		L. S. & M. S.....		5/20		
L. S. & M. S.....		6/2		Grand Trunk.....		6/2		
Grand Trunk		6/19		Mich. Central		6/19		
Mich. Central		7/26		Chic., Milw. & St. P.		7/26		
Chic., Milw. & St. P.		7/29		Mich. Central.....		7/29		
Mich. Central		8/26		Chic. Junction		8/26		
Chic. Junction.....		8/31		Mich. Central		8/31		
Mich. Central.....		10/10		Chic., Rock I. & Pac.		10/10		
C. R. I. & Pac.....		10/14		Missouri Pac.....		10/14		
Mo. Pac.....		10/20		C. R. I. & Pac.....		10/20		
C. R. I. & Pac.....		11/27		Chicago, Peoria & West.		11/27		
Chicago, Peoria & West.		11/29		Chic., R. I. & Pac...		11/29		
C. R. I. & Pac.....		12/1		Ind., Ill. & Iowa....		12/1		
I. I. & Iowa.....		12/2		N. Y., Chic. & St. L.		12/2		
N. Y. C. & St. L...		12/5		Lehigh Valley		12/5		
Cent. of N. J.....		1/2		Penn. Railroad		1/2		
Lehigh Valley.....		12/7		Cent. of New Jersey.		12/7		
Penn. R. R.....		1/9		Washington South..		1/9		

64 New York Central & Hudson River Railroad Co.

NEW YORK, Jan. 16th, 1903.

DEAR SIR: Below please find movement of N Y C car number 59578 from
C. H. EWINGS, Car Acc't.

From	Train.	Date.	Time.	To	L. or E.	Date.	Time.	Con.
N. Y. Central		4/2		L. S. & M. S		4/2		
L. S. & M. S		4/17		Lake Erie & West		4/17		
L. E. & Western		5/8		Cin., Ham. & Dayton		5/8		
Cin., Ham. & Dayton		5/20		L. S. & M. S		5/20		
L. S. & M. S		5/23		Mich. Central		5/23		
Mich. Central		6/4		Erie		6/4		
Erie		6/15		Mich. Central		6/15		
Mich. Central		8/20		Tor. Ham. & Buffalo		8/20		
Tor. Ham. & Buffalo		8/21		Mich. Central		8/21		
Mich. Central		9/15		Chic. & Alton		9/15		
Chic. & Alton		9/30		L. S. & M. S		9/30		
L. S. & M. S		10/12		Atch., Top. & S. Fe		10/12		
Atch., Top. & S. Fe		10/15		Ill. Northern		10/15		
Ill. Northern		10/19		Atch., Top. & S. Fe		10/19		
Atch., Top. & S. Fe		10/23		L. S. & M. S		10/23		
L. S. & M. S		10/31		Del. Lack. & Western		10/31		
Del., Lack. & Western		11/28		Mich. Central		11/28		
Mich. Central		12/26		L. S. & M. S		12/26		
L. S. & M. S		1/1		Penn. R. R		1/1		

New York Central & Hudson River Railroad Co.

NEW YORK, Jan. 16th, 1903.

DEAR SIR: Below please find movements of N Y C car number 63158 from
C. H. EWINGS, Car Acc't.

From	Train.	Date.	Time.	To	L. or E.	Date.	Time.	Con.
N. Y. Central		6/12		L. S. & M. S		6/12		
L. S. & M. S		7/11		Ohio Cent. lines		7/11		
Ohio Cen. lines		7/18		L. S. & M. S		7/18		
L. S. & M. S		8/18		Pere Marquette		8/18		
Pere Marquette		9/8		L. S. & M. S		9/8		
L. S. & M. S		9/18		Wabash		9/18		
Wabash		9/28		L. S. & M. S		9/28		
L. S. & M. S		10/2		Chic., Mil. & St. P		10/2		
Chic., Mil. & St. P		10/5		Union Pacific		10/5		
Union Pacific		10/11		Southern Pacific		10/11		

65 New York Central & Hudson River Railroad Co.

NEW YORK, Jan. 16th, 1903.

DEAR SIR: Below please find movements of N Y C car number 18236 from C. H. EWINGS, Car Acc't.

From	Train.	Date.	Time.	To	L. or E.	Date.	Time.	Con.
N. Y. Central.....		3/5		Mich. Central.....		3/5		
Mich. Central.....		3/6		Pere Marquette.. ...		3/6		
Pere Marquette.....		4/2		Mich. Central.....		4/2		
Mich. Central.....		4/10		Chic., Ind. & L'ville..		4/10		
Chic., Ind. & Lou...		5/3		Elgin, Jol. & Eastern.		5/8		
Elgin, Jol. & Eastern.		5/8		L. S. & M. S.....		5/8		
L. S. & M. S.....		5/13		Wheeling & L. Erie..		5/13		
Wheeling & L. Erie..		6/6		L. S. & M. S.....		6/6		
L. S. & M. S		6/9		Ill. Central.....		6/9		
Ill. Central.....		7/2		L. S. & M. S..... ..		7/2		
L. S. & M. S.....		8/21		Cin., Ham. & Dayton.		8/21		
Cin., Ham. & Dayton.		8/24		Louisvl. & N'shville.		8/24		
Louisvl. & N'shville.		9/24		Penn. Company.....		9/24		
Penn. Company.....		11/10		Lake Erie & Western.		11/10		
Lake Erie & Western.		11/25		Penn. Company.....		11/25		
Penn. Company.....		12/20		Clev., Cinn., Chic., & St. L.		12/20		

New York Central & Hudson River Railroad Co.

NEW YORK, Jan. 16th, 1903.

DEAR SIR: Below please find movements of N Y C car number 63123 from C. H. EWINGS, Car Acc't.

From	Train.	Date.	Time.	To	L. or E.	Date.	Time.	Con.
N. Y. Central.		6/15		L. S. & M. S.....		6/15		
L. S. & M. S.....		6/18		Penn. Railroad.....		6/18		
Penn. Railroad.....		6/22		L. S. & M. S..... ...		6/22		
L. S. & M. S.....		6/25		Baltimore & Ohio....		6/25		
Baltimore & Ohio...		7/17		L. S. & M. S.....		7/17		
L. S. & M. S.....		8/1		Penn. Company.....		8/1		
Penn. Company.....		8/6		L. S. & M. S.....		8/6		
L. S. & M. S.....		8/14		Wheeling & L. E....		8/14		
Wheeling & Lake E..		9/5		Mich. Cent....		9/5		
Mich. Central.....		9/19		Wis. Central.....		9/19		
Wis. Central.....		9/21		Mich. Central.....		9/21		
Mich. Central.		9/26		Chic. Ter. & Trans...		9/26		
Chic. Ter. & Trans...		10/7		Chicago Belt		10/7		
Chic. Belt.....		10/8		N. Y., Chic. & St. L..		10/8		
N. Y., Chic. & St. L...		10/10		L. S. & M. S.....		10/10		
L. S. & M. S.....		11/5		Chic., Bur. & Quin...		11/5		
Chic., Bur. & Quin...		11/20		Chic. Belt.....		11/20		
Chic. Belt.....		11/29		Mich. Central.		11/29		
Mich. Central.....		12/8		Detroit, Tol. & Mil...		12/8		
Detroit, Tol. & Mil...		12/21		Penn. Company.....		12/21		

66 New York Central & Hudson River Railroad Co.

NEW YORK, Jan. 16th, 1903.

DEAR SIR: Below please find movements of N Y C car number 63176 from C. H. EWINGS, Car Acc't.

From	Train.	Date.	Time.	To	L. or E.	Date.	Time.	Con.
N. Y. Central		2/11		L. S. & M. S.		2/11		
L. S. & M. S.		2/14		C., C., C. & St. L.		2/14		
C., C., C. & St. L.		2/17		Ohio Central lines		2/17		
Ohio Central lines		2/22		Chesapeake & Ohio		2/22		
Chesap. & Ohio		3/27		C., C., C. & St. L.		3/27		
C., C., C. & St. L.		3/29		Ill. Central		3/29		
Ill. Central		4/11		Chic. Ter. & Trans.		4/11		
Chic. Ter. & Trans.		4/12		Chic. Belt		4/12		
Chic. Belt		4/30		L. S. & M. S.		4/30		
L. S. & M. S.		5/16		Chic. Junction		5/16		
Chic. Junction		5/20		L. S. & M. S.		5/20		
L. S. & M. S.		5/24		Lehigh Valley		5/24		
Lehigh Valley		5/28		N. Y., N. H. & H.		5/28		
N.Y., N. H. & H.		5/29		Boston & Maine		5/29		
Boston & Maine		6/21		N. Y., N. H. & H.		6/21		
N.Y., N. H. & H.		7/6		Lehigh Valley		7/6		
Lehigh Valley		7/7		Ironton R. R		7/7		
Ironton R. R		7/8		Lehigh Valley		7/8		
Lehigh Valley		7/11		Mich. Central		7/11		
Mich. Central		9/12		Lehigh Valley		9/12		
Lehigh Valley		9/21		Norfolk & Western		9/21		
Norfolk & Western		10/31		C., C., C. & St. L.		10/31		
C., C., C. & St. L.		11/2		Grand Rap. & Ind.		11/2		
Grand Rap. & Ind.		11/15		Dul., S. Shore & Atl.		11/15		
Dul., S. Shore & Atl.		11/17		M., St. P. & S. Ste. M.		11/17		
M., St. P. & S. Ste. M.		11/29		Dul., S. Shore & Atl.		11/29		
Dul., S. Shore & Atl.		12/3		Grand Rap. & Ind.		12/3		
Grand Rap. & Ind.		12/18		Penn. Company		12/18		

67 New York Central & Hudson River Railroad Co.

NEW YORK, January 16th, '03.

DEAR SIR: Below please find movements of N Y C car number 64431 from C. H. EWINGS, Car Acc't.

From	Train.	Date.	Time.	To	L. or E.	Date.	Time.	Con.
N. Y. Central		6/27		L. S. & M. S.		6/27		
L. S. & M. S.		7/8		Chic., Ind. & Louis.		7/8		
Chic., Ind. & Louis.		7/14		Mich. Central		7/14		
Mich. Central		7/30		Det., Tol. & Mil.		7/30		
Det., Tol. & Mil.		8/5		L. S. & M. S.		8/5		
L. S. & M. S.		8/18		Penn. R. R.		8/18		
Penn. R. R.		9/7		N. Y., N. H. & H.		9/7		
N. Y., N. H. & H.		9/9		Boston & Maine		9/9		
Bost. & Maine		9/17		N. Y., N. H. & H.		9/17		
N. Y., N. H. & H.		9/19		Bost. & Maine		9/19		
Bost. & Maine.		9/24		N. Y., N. H. & H.		9/24		
N. Y., N. H. & H.		10/4		Penn. R. R.		10/4		
Penn. R. R.		10/22		Penn. Co.		10/22		

New York Central & Hudson River Railroad Co.

NEW YORK, February 9, 1903.

DEAR SIR: Below please find movements of N Y C car number 61834 from C. H. EWINGS, Car Acc't.

Movements.	Month.	Day.	Year.	L. or E.	Time.	Train.	Con.
Rec'd from							
From N. Y. C.....							
To L. S. & M. S.....	July	2	1902		M		
From "							
To Elgin, Joliet & Eastern.	"	6	"		M		
From " " " .							
To Chicago & No. Western.	"	8	"		M		
From " " " .							
To Union Pacific.....	"	10	"		M		
From " "							
To Southern Pacific.....	"	14	"		M		
From " "							
To Union Pacific	Aug.	8	"		M		
From " "							
To Southern Pacific.....	"	11	"		M		
Del'd to " "							
Rec'd to " "							
From Southern Pacific							
To Atch., Topeka & Santa Fe Coast Line	Dec.	17	"		M		
From " " "							
To Southern Pacific.....	"	18	"		M		

68 New York Central & Hudson River Railroad Co.

NEW YORK, February 9, 1903.

DEAR SIR: Below please find movements of N Y C car number 14035 from C. H. EWINGS, Car Acc't.

Movements.	Date. Month.	Day.	Year.	L. or E.	Time.	Train.	Con.
Rec'd from					M		
N. Y. C.					M		
To L. S. & M. S.	Dec.	20	1901		M		
From " "					M		
To Cleve. Cin. Chic. & St. L.	"	23	"		M		
From " " "					M		
To Norfolk & Western	"	28	"		M		
From " "					M		
To Cleve. Cin. Chic. & St. L.	Jan.	8	1902		M		
From " " "					M		
To Norfolk & Western	"	12	"		M		
From " "					M		
To Chesapeake & Ohio	"	14	"		M		
From " "					M		
To Southern	"	20	"		M		
Del'd to					M		
Rec'd from					M		
From Southern					M		
To Washington Southern	Feb.	20	"		M		
From " "					M		
To Southern	Mar.	15	"		M		
From "					M		
To Baltimore & Ohio	"	24	"		M		
From " "					M		
To Southern	Apr.	21	"		M		
From "					M		
To Baltimore & Ohio	July	9	"		M		
From " "					M		
To Southern	"	11	"		M		
From "					M		
To Washington Southern	Sept.	3	"		M		
Del'd to					M		
Rec'd from					M		
From Wash. Southern					M		
To Southern	Oct.	26	"		M		
From "					M		
To Chesapeake & Ohio	Nov.	7	"		M		
From " "					M		
To Penn. R. R.	Dec.	3	"		M		
From "					M		
To Chesapeake & Ohio	Jan.	4	1903		M		
From " "					M		
To					M		
From					M		
To					M		
From					M		
To					M		
Del'd to					M		

69 New York Central & Hudson River Railroad Co.

NEW YORK, February 9, 1903.

DEAR SIR: Below please find movements of N Y C car number 27941 from
C. H. EWINGS, Car Acc't.

Movements.	Date. Month.	Day.	Year.	L. or E.	Time.	Train.	Con.
Rec'd from					M		
From N. Y. C.					M		
To Mich. Central	June	12	1902		M		
From "					M		
To Chic. R. Island & Pac.	"	14	"		M		
From " "					M		
To Colo. Midland	"	18	"		M		
From " "					M		
To Rio Grande Western	"	20	"		M		
From " "					M		
To Southern Pacific	"	21	"		M		
From " "					M		
To Union Pacific	Aug.	8	"		M		
From " "					M		
To Southern Pacific	Sept.	16	"		M		
Del'd to							
Rec'd from					M		
From Southern Pacific					M		
To Union Pacific	Sept.	22	1902		M		
From " "					M		
To Rio Grande Western	"	23	"		M		
From " "					M		
To Colo. Midland	Oct.	7	"		M		
From " "					M		
To Denver & Rio Grande	"	31	"		M		
From " " "					M		
To Colo. Midland	Nov.	5	"		M		
From " "					M		
To Chic., R. Island & Pac.	"	25	"		M		
From " " "					M		
To					M		
Del'd to							

70 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of The New York Central and Hudson River Railroad Company, Relator,
against
NATHAN L. MILLER, as Comptroller of the State of New York, Respondent.

Stipulation under Sections 3301 and 1353 of the Code of Civil Procedure.

It is hereby stipulated, under section 3301 of the Code of Civil Procedure, that the foregoing are true copies of the petition for writ of certiorari, order of issuance of writ, writ, and return to writ and

certification thereof, as required by section 1353 of the Codes of Civil Procedure, is hereby waived.

Dated New York, October 28, 1903.

IRA A. PLACE,
Attorney for Relator.
JOHN CUNNEEN,
Attorney General, Attorney for Respondent.

71 Order of Appellate Division.

At a term of the appellate division of the supreme court of the State of New York, held in and for the third judicial department of said State, at the appellate division court room, in the city of Albany, commencing on the 10th day of November, 1903.

Present: Hon. Charles E. Parker, presiding justice. Walter Lloyd Smith, Emory A. Chase, Alden Chester, James H. Houghton, associate justices.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Central and Hudson River Railroad Company, Relator,
vs.
NATHAN L. MILLER, as Comptroller of the State of New York, Defendant.

This cause having been brought on for argument and having been heard upon the writ of certiorari and return and the papers upon which the writ was granted and having been argued by Ira A. Place, Esq., of counsel for the relator, by William H. Wood, Esq., deputy attorney general, of counsel for the defendant,

Now, on motion of John Cunneen, attorney general, attorney for the defendant,

72 It is ordered, that the determination of the comptroller be and the same hereby is unanimously confirmed, with fifty dollars costs and disbursements.

[L. S.] JOSEPH H. HOLLANDS, Clerk.

(A copy.) JOSEPH H. HOLLANDS, Clerk.

73 **Affidavit of No Opinion.**

In the Court of Appeals.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Central and Hudson River Railroad Company, Appellant,
against
NATHAN L. MILLER, as Comptroller of the State of New York, Respondent.

STATE OF NEW YORK, County of New York, } ss.:

Thomas Emery, being duly sworn, deposes and says: That he is an attorney and counsellor at law in the office of Ira A. Place, attorney for the appellant in the above-entitled action; that he is familiar with the action and the proceedings taken therein, and that no written opinion was handed down by the appellate division of the supreme court, third department, except the opinion handed down in a similar proceeding for the year 1900.

THOMAS EMERY.

Sworn to before me this 18th day of December, 1903.
JOHN A. MATTISON,
Notary Public, N. Y. County.

74 Relator's Notice of Appeal to Court of Appeals.

Supreme Court, County of Albany.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Central and Hudson River Railroad Company, Relator,
against
NATHAN L. MILLER, as Comptroller of the State of New York, Respondent.
} Notice of Appeal to Court of Appeals. Proceeding for 1901.

SIRS: Please take notice that the relator in the above-entitled action hereby appeals to the court of appeals from the order of the appellate division of the supreme court, third department, entered herein in the office of the clerk of the county of Albany, on the 10th day of December, 1903, and from each and every part of said order.

Dated New York, December 14, 1903.

Yours, &c.,
IRA A. PLACE,
Attorney for Relator, Room 417, Grand Central Station,
Borough of Manhattan, New York City, N. Y.

To John Cunneen, Esq., attorney for respondent, capitol, Albany, N. Y., and clerk of the county of Albany, Albany, N. Y.

75 Stipulation.

In the Court of Appeals.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Central and Hudson River Railroad Company, Appellant,
against
NATHAN L. MILLER, as Comptroller of the State of New York, Respondent.

Stipulation under Sections 3301 and 1353 of the Code of Civil Procedure. Proceedings for 1901.

It is hereby stipulated, under section 3301 of the Code of Civil Procedure, that the foregoing are true copies of the notice of appeal, the order appealed from and the papers upon which the court below acted in making said order, on file in the office of the clerk of Albany county, and certification thereof, as required by section 1353 of the Code of Civil Procedure, is hereby waived.

Dated borough of Manhattan, New York city, December 21, 1903.

IRA A. PLACE,
Attorney for Appellant.
JOHN CUNNEEN,
Attorney General, Attorney for Respondent.

76 Court of Appeals.

STATE OF NEW YORK, *ss*:

Pleas in the Court of Appeals, Held at the Capitol, in the City of Albany, on the 23rd Day of February, in the Year of Our Lord One Thousand Nine Hundred and Four, Before the Judges of said Court.

Witness, the Hon. Alton B. Parker, chief judge presiding.
W. H. SHANKLAND, Clerk.

Remittitur February 24th, 1904.

Albany Special Term, M'ch 12, 1904.

Read on motion and ordered filed in Albany county clerk's office.
JOHN FRANEY, Clerk.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* The New York Central and Hudson River Railroad Company, Appellant,
ag'st
NATHAN L. MILLER, as Comptroller, etc., Respondent.

Proceeding for 1901.

Be it remembered, that on the 28th day of December in the year of our Lord one thousand nine hundred and three The New York

Central and Hudson River Railroad Company, the appellant in this proceeding came here into the court of appeals, by Ira A. Place, its attorney, and filed in the said court a notice of appeal and re-
77 turn thereto from the order of the appellate division of the supreme court in and for the third judicial department. And Nathan L. Miller, as comptroller etc. the respondent in said proceeding, afterwards appeared in said court of appeals by John Cunneen, attorney general, his attorney. Which said notice of appeal and the return thereto filed as aforesaid, are hereunto annexed.

Whereupon, the said court of appeals having heard this cause argued by Mr. Ira A. Place of counsel for the appellant, and by Mr. John Cunneen of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the appellate division of the supreme court appealed from herein be, and the same hereby is affirmed with costs relator having contended herein that if the statute purported to authorize the tax here in question said statute was violative of the Constitution of the United States in the particular following. The court hold and adjudge that the statute (1) does not offend against the commerce clause (article 1 section 8) of the Federal Constitution (2) does not contravene the provisions of article 1 section 10 thereof forbidding impairment of the obligations of contracts (3) does not offend against the provisions of the fourteenth amendment thereof forbidding the State to deprive any person of property without due process of law.

And it was also further ordered, that the record aforesaid, and the proceedings in this court, be remitted to the said supreme court, there to be proceeded upon according to law.

Therefore, it is considered that the said order be affirmed, with costs etc. etc. as aforesaid.

And hereupon, as well the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by
78 them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, February 24th, 1904.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

[SEAL.] W. H. SHANKLAND, Clerk.

STATE OF NEW YORK,
County of Albany, Clerk's Office, } ss:

I, John Franey, clerk of the said county, and also clerk of the supreme and county courts, being courts of record held therein, do hereby certify that I have compared the annexed copy remittitur with the original thereof, filed in this office on the 16th day of March, 1904, and that the same is a correct transcript therefrom, and of the whole of said original.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 11th day of May, 1904.

[SEAL.] JOHN FRANEY, Clerk.

79 In the Court of Appeals of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* The New York Central and Hudson River Railroad Company, Appellant,
v.
NATHAN L. MILLER, as Comptroller of the State of New York, Respondent.
} Actions 1 and 2.

People *ex rel.* N. Y. C. & H. R. R. R. Co. *v.* Miller, 89 App. Div. 127, affirmed.

(Argued February 9, 1904; decided February 23, 1904.)

Appeals from orders of the appellate division of the supreme court in the third judicial department, entered December 10, 1903, which affirmed determinations of the defendant in imposing a tax upon the relator for the years 1900 and 1901 under section 182 of the tax law.

Ira A. Place and Thomas Emery for appellant.

John Cunneen, attorney-general (William H. Wood on the brief), for respondent.

Orders affirmed, with costs, on opinion in People *ex rel.* N. Y. C. & H. R. R. R. Co. *v.* Knight (173 N. Y. 255).

Concur: Parker, Ch. J., Haight, Martin, Vann and Cullen, JJ. Not sitting: Gray, J. Not voting: O'Brien, J.

80 [Endorsed:] In the court of appeals of the State of New York. The People of the State of New York, upon the relation of The New York Central and Hudson River Railroad Company, appellant, *v.* Nathan L. Miller, as comptroller of the State of New York, respondent. Memoranda opinion. Tax of 1901.

81 In the Court of Appeals of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE NEW York Central and Hudson River Railroad Company, Appellant and Respondent,

v.

ERASTUS C. KNIGHT, as Comptroller of the State of New York, Respondent and Appellant.

Cross-appeals from an order of the appellate division of the supreme court in the third judicial department, entered September 20, 1902, which modified and affirmed as modified a determination of the defendant assessing a franchise tax against the relator for the year ending October 31, 1900.

The facts, so far as material, are stated in the opinion.

Opinion of the court per HAIGHT, J.:

"I concur in the conclusions reached by O'Brien, J., except as to that part thereof which holds that the item of $15,230,186.06 is not taxable. The court below found that this item represented the rolling stock employed outside of the State, it 'being such proportion of all of relator's rolling stock as the mileage thereof without the State bears to the entire mileage of said rolling stock.' As I understand this finding it is to the effect that the rolling stock of the relator is used in this State and outside of the State; that is, cars are loaded at some point in the State, as for instance in the city of New York, and run over the relator's road to some other
82 point, say, the city of Buffalo. They then are transferred on to other roads and are run to points outside of the State where they are unloaded and then reloaded and returned to this State. The entire mileage includes that traveled in this State as well as that out of the State; this, with the distance traveled outside of the State and the total value of the stock, furnishes the proportion upon which the computation is made.

The question is as to whether this stock is taxable under the statute. The relator is a domestic corporation. It owns the rolling stock. It is used upon its lines of railroad in this State. True, the cars are transferred on to other roads and are run outside of the State for the purpose of facilitating the transportation of persons and freight without change of cars or of breaking bulk, but the use of the cars outside of the State is but temporary, for they are returned as soon as reloaded and are again used in the transportation of persons and property within this State. It seems to me, therefore, that, under a fair and reasonable construction of the statute this item should have been included as capital employed within this State.

Under the findings of the court below, as we understand them, the average amount of the relator's capital stock during the year was

$108,750,000; the average price was $129.8125, making the average cash value of the relator's capital stock for the year $141,171,093.75. The entire amount of the relator's total assets was $337,760,785.52, and the portion of such assets as used in this State $205,029,380.45, to which sum should be added the relator's rolling stock
$15,230,186.06, making the total assets used within the
83 State $220,259,566.51. The statement would thus be x: 141,171,093.75 : : 220,259,566.51 : 337,760,785.52. Under this statement x = $92,060,076.91, the amount to be assessed at one and one-half mills, which amounts to $138,090.11.

In view of the fact that there is no express finding by the comptroller that none of the relator's rolling stock was used exclusively outside of the State, I think it advisable that the proceedings should be remitted to the comptroller, to the end that further evidence may be taken upon that subject in case it should be claimed that some portion of the relator's rolling stock was used continuously outside of the State, and if it should be found that such was the fact, the amount thereof should be deducted and the order of the appellate division and that of the comptroller should be modified accordingly, without costs to either party."

Opinion per O'Brien, J.:

"This appeal presents a controversy between the relator and the State concerning the amount of the annual franchise tax for the year ending October 31, 1900. The statute prescribes that this tax must be computed upon the basis of the amount of the relator's capital stock employed within the State. The main contention of the learned counsel for the relator is that the computation should be made upon the stock so employed at its par and not its actual value, and, hence, the determination now here for review is erroneous since the computation was made upon the latter principle. The language of section 182 of the tax law would seem to support the relator's contention, but this court has recently held that this section must be
read with section 190, and when so read the basis for the tax
84 is the actual and not the par value of the stock. (People *ex rel.* N. Y. & E. R. Ferry Co. *v.* Roberts, 168 N. Y. 14.) In the present case it would, doubtless, be to the advantage of the relator to have the tax based upon the par value of the stock, since that value is much less than the actual value and the dividends are only five per cent., but in case of a corporation that had paid even a smaller dividend and whose stock was much below par it would be decidedly to its disadvantage. By reading the two sections together absurd and unequal results are avoided. The two sections are apparently conflicting. In such cases it is the duty of courts to reconcile contradictory or conflicting provisions when possible, and the case cited is a precise authority for the principle that the tax should be based upon the actual value. This permits the statute to operate in a way that is reasonable and just while the other view would render it even more confusing than it now is. Courts cannot always

follow logical reasons when dealing with a complicated statute constructed without much method or system in the arrangement of its different parts and lacking in clearness and precision of language.

Passing from this question of construction, there is nothing left of the controversy on either side save the proper application of the rule and the principles upon which the actual value of the relator's capital in this State is to be ascertained. With respect to this question it should be noted at the outset that the writ of certiorari was made returnable at the appellate division and the issues were there tried and heard upon the relator's petition, the writ and the return of the comptroller, including the papers attached thereto. The general and primary question that the court had before it for decision was one of fact, and that was the actual value of that
85 part of the relator's capital employed within this State, and upon that question the learned court made findings upon which its general conclusion is based. In the main we think these findings are correct. There is one item of property which the court found, as matter of fact, to be employed outside the State, which, nevertheless, it felt constrained for some reason that does not distinctly appear to include as part of the property or capital stock employed in this State. It may be that this is an inadvertence or oversight, but it will be referred to more fully hereafter. The learned court in stating the account excluded certain items of property which the learned attorney-general contended and still insists should be included, and the ground upon which they were excluded from the calculation was that they either represented property employed outside the State or did not in any legal sense constitute capital at all. A very brief reference to these items will show that the action of the court below was correct.

(1.) The relator held $90,578,400 of the stock of the Lake Shore and Michigan Southern Railway Company and $18,900,825 in the Michigan Central Railroad Company. This stock was part of the relator's capital or general assets. Both companies are foreign corporations, the former being partly within and partly without the State and the latter entirely without the State. This stock was purchased by the relator by the issue of bonds and the stock was pledged to a trust company as collateral security for the payment of the bonds. The relator being the owner of these stocks, they constituted part of its capital, but that part of its capital was not employed within this State, and so this court has held. (People *ex rel.* Edison El. L. Co. *v.* Campbell, 138 N. Y. 543; People *ex rel.* Edison El. L. Co. *v.*
86 Wemple, 148 N. Y. 690.) In the former case Judge Earl, speaking for this court, said: 'The stock which the relator took in companies organized outside of this State stood for so much of the relator's capital invested outside of the State. It took a portion of its capital, to wit, a portion of its patent rights, and employed it outside of the State to purchase those stocks. Its property in those corporations represented by its shares of stock was outside of this State and was in no sense employed

here. Those stocks had no *situs* here and were not taxable here under any system of taxation which has ever existed in this State.' In the case at bar the stock was purchased, not with patent rights, but with the bonds of the company sought to be taxed. The form of the consideration, however, can make no difference, and so long as that part of the relator's capital represented by the purchase was employed outside of the State it should not be included. Nor can it be important that the stock had for convenience been used as a security upon deposit as collateral for the bonds in a trust company located in this State.

(2.) The court below found that a certain portion of the relator's rolling stock, that is to say, its cars, both freight and passenger, was employed outside the State, the proportion being estimated on the mileage or wheelage basis at $15,230,186.06. The court excluded this item from the calculation on the authority of People *ex rel.* Lackawanna Transp't'n Co. *v.* Knight (75 App. Div. 164). It was there held that the term 'employed within this State,' used in section 182, did not mean simply the legal *situs* of the property, and this principle was decided in other cases. (People *ex rel.* Chicago Junction, etc., Co. *v.* Roberts, 154 N. Y. 1; People *ex rel.* Washington Mills Co. *v.* Roberts 8 App. Div. 201; affirmed on opinion below, 151 N. Y. 619.) It
87 is obvious that since the relator is a great interstate railroad traversing the continent that a large proportion, or at least some, of its rolling stock must be always employed outside of the State. It may be that the *situs* of all the relator's property is in the State of its creation, but, as already remarked, the question is not where the *situs* is, but where the property is employed. It may be that various States through which the relator's railroad is operated impose taxes upon such part of its property as upon the basis adopted here is found to be employed in these States respectively, so we think that the learned court below was correct in excluding this item from the estimate of the relator's property employed within this State. The relator is practically operating a continuous line of railroad from New York to Chicago and beyond. It not only owns nearly $110,000,000 of the stock of the western connecting roads, as shown by the record, but is operating these roads as western connections either under leases or traffic agreements. It is practically the owner of these roads just as it is the owner of the West Shore in this State. The operations of the Central do not stop at Buffalo, but extend beyond and through Canada and various Western States. It owns these western roads by practically as good a title as it owns the West Shore in this State, and, hence, as already observed, it is operating a continuous line of railroad from the Atlantic seaboard through various States of the West. The part of the line beyond the limits of this State is longer than that part from New York to Buffalo, and the local and through traffic is immense. Therefore, to contend that all the rolling stock of the relator is 'employed in this State' would seem to me to be an indefensible proposition. Certainly

some of it much necessarily be employed in other States.
88 It cannot all be employed at the eastern end of the line. If so, then the part of the rolling stock employed outside and inside of this State is a question of fact and the court below has found that a designated part of the rolling stock is employed without the State. This court has no power to interfere with that result unless it can say that there is absolutely no evidence in support of the finding. It cannot say that for the plain reason that, as appears from the record, there was evidence on that subject and no one claims otherwise. It has the power to say that, granting to the full extent the fact found as to the employment of part of the rolling stock out of this State, yet as matter of law, since the relator is a domestic corporation and the *situs* of all its personal property is here, all the rolling stock is employed in this State. But such a decision would seem to me to be not only plainly wrong in principle, but sharply opposed to many decisions of this court, some of which are cited above. The stock of the western railroads, amounting to nearly $110,000,000, and the coal and other personal property that we have just held is not employed in the State, is owned and held here in just the same sense as the rolling stock, and why this property is employed outside the State, and all the rolling stock within the State is not made very clear to me, and, therefore, I am in favor of accepting the finding of the trial court that a certain and designated part of the cars and engines of the relator are employed outside of the State.

(3.) The learned court below found that three other items of the relator's property, amounting in the aggregate to $1,236,871.17, was not capital at all, or at least was not employed in this State.
89 This general item was made up of the sum of $965,217.97 for 'anticipated dividends' on stock of other corporations which the relator owned. The dividends had not been declared, and were, therefore, a mere incident to the stock. It seems to be conceded by both parties that this item was properly excluded. The second item embraced in the general amount above stated was $171,653.20 for bills receivable. This sum appears to have been made up of expenditures by the relator on leased lines. No direct return is expected for these expenditures and the relator holds no obligation for reimbursement, although carried on the books as 'bills receivable,' and so the court below properly held that this item constituted no part of the relator's property within this State for the purposes of the franchise tax. The third item entering into the general sum above stated was $100,000 for coal and supplies without the State. It is hardly conceivable that all the coal which the relator uses in the operation of its railroad can be said to be employed within this State, and so this item was properly found to be property not employed in this State. There was no error in the decision of the court below excluding these three items from the calculation.

(4.) The relator owned $2,597,400 of the capital stock of the Mer-

chants Dispatch Transportation Company, a domestic corporation engaged in the transportation business. Eighty-nine per cent. of that amount, or $2,311,686, represented business of that company outside the State, and although these facts are found by the learned court below, it included the latter amount in its valuation of the relator's property employed within this State. Since the relator's holdings in this company were employed outside the State we think they should not be included in the calculation under the authori-
90 ties cited above. It is very difficult to see how a distinction was made between those items and the other items referred to which the learned court below excluded. It seems to have been assumed that since this stock was that of a domestic corporation it constituted a part of the relator's property employed in this State; but, as already observed, the legal *situs* of the property does not determine the question, and since the learned court below found that the transportation company that issued the stock employed the capital represented thereby outside the State it is difficult to understand how the relator, by the mere fact of its ownership of the stock, could employ the capital represented by it in this State. With respect to this item, we think that the decision of the learned court below should be corrected by the proper modification.

By a process of calculation which is not questioned here by either party, except as to the matters above referred to, the learned court below found, as stated in the opinion, that the amount of the relator's capital employed within this State upon which the tax should be computed was $90,151,825.98, but since that amount was the result of an error in including a portion of the stock of the transportation company employed without the State, namely, the sum of $2,311,686, the calculation and estimate should be corrected upon the principles adopted as to the other items, and this process which seems to have been finally adopted by the court below in the official report of the case, will give the following result: The percentage of its entire capital employed within the State during the year was .60702, or over sixty per cent. The average amount of its entire capital stock at par was $108,750,000, and the average share price was $129.8125, making the average value for the average amount of stock
91 $141,171,093.75, and the amount upon which the tax of one and one-half mills should be computed $85,694,383.18, and the amount of the tax $128,541.57. There is a material discrepancy between the amount upon which the tax is to be computed as stated in the opinion of the learned court below and that stated in the findings. In the former, as already observed, the amount stated as the basis of the tax is $90,151,825.98 and the tax $136,227.73, while the actual finding of the court is that the amount upon which the tax should have been and should be computed is $86,659,287.62, and the tax should have been and should be $129,988.93. The discrepancy may, no doubt, be accounted for by assuming that the court below, in making up the judgment did not follow the opinion. However that may be, it will be seen that the result expressed in the findings

below makes the tax somewhat larger than the result at which we have arrived. The opinion of the court below as found in the record differs materially from that contained in the official report of the case (75 App. Div. 169). In the latter the case seems to be decided upon the principles herein stated, the slight difference in results being due to an error in the figures.

The order of the appellate division should be modified accordingly, with costs to the relator in this court."

Parker, Ch. J., Bartlett, Martin and Cullen, JJ., concur with Haight, J.; O'Brien, J., reads for modification of order; Van, J., absent.

Ordered accordingly.

92 [Endorsed:] In the court of appeals of the State of New York. The People of the State of New York *ex rel.* The New York Central and Hudson River Railroad Company, app'l't & resp't, against Erastus C. Knight, as comptroller of the State of New York, resp't & app'l't. Opinion.

93 At a special term of the supreme court of the State of New York, held in and for the county of Albany, at the city hall in Albany, N. Y., on the 13th day of March, 1904.

Present: Hon. D. Cady Herrick, justice.

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE NEW York Central & Hudson River Railroad Company
vs.
NATHAN L. MILLER, as Comptroller of the State of New York.

The above entitled cause having been taken to the court of appeals from an order of the appellate division of the supreme court in the third department, entered and filed in the office of the clerk of said appellate division, in the city of Albany, N. Y., on December 10, 1903, which order affirmed the determination of the comptroller in auditing and stating the account of the relator for the State franchise tax based on the value of the capital stock of the relator employed in this State for the year ending October 31, 1901, amounting to $235,755.00, and adjudged that the defendant recover against the relator the sum of fifty dollars costs and disbursements, and said appeal having been taken from every part of said order and the said court of appeals having rendered judgment in the cause on the 23rd day of February, 1904, in all things affirming the judgment of said appellate division, further ordering that the record of said
94 cause and that the proceedings in the court of appeals be remitted to the supreme court, to be enforced according to law, and also further ordering that the defendant recover of the relator, The

New York Central & Hudson River Railroad Company, the costs of appeal to said court of appeals, now therefore, on reading and filing the said remittitur, and on motion of John Cunneen, attorney general, attorney for the defendant,

It is ordered and adjudged that the judgment of the court of appeals be and the same hereby is made the judgment of this court, and that the defendant recover of the said relator, The New York Central & Hudson River Railroad Company the costs and disbursements of this proceeding.

D. CADY HERRICK
Jus. Sup. Ct.

95 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE NEW York Central & Hudson River Railroad Company
vs.
NATHAN L. MILLER, as Comptroller of the State of New York.

An order in this action having been made by the appellate division of the supreme court, third department, which order was entered in the office of the clerk of said appellate division, in the city of Albany on December 10, 1903, affirming the determination of the comptroller, in auditing and stating the account of the relator for the State franchise tax for the year ending October 31, 1901, at the sum of $225,755.00, and adjudging that the defendant recover from the relator the sum of fifty dollars costs and disbursements, and an appeal having been taken by the relator from said order to the court of appeals, and the said court of appeals having rendered judgment in this cause on the 23d day of February, 1904, in all things affirming said order of the appellate division, and further ordering that the defendant recover from the relator the costs of appeal to said court of appeals, and further ordering that the record in said cause and proceeding in said court of appeals be remitted to the supreme court, to be enforced according to law, and the said court of appeals having ordered to be sent to this court its remittitur, by which it appears that the said court of appeals has affirmed said judgment of the appellate division in all things, with costs,
96 and has given judgment accordingly, and this court having by order entered herein on the 16th day of March, 1904, ordered that the said judgment of the court of appeals be made the judgment of this court, with costs and disbursements,

Now therefore, on motion of John Cunneen, attorney general, attorney for the defendant, it is adjudged that the judgment of said court of appeals be, and the same hereby is made the judgment of this court, and that the defendant have execution against the relator, The New York Central & Hudson River Railroad Company for the sum of $142.70 costs and disbursements.

JOHN FRANEY, Clerk.

97 [Endorsed:] New York supreme court. The People of the State of New York, upon the relation of the New York Central and Hudson River Railroad Company, against Nathan L. Miller, as comptroller of the State of New York. Order and judgment. Tax of 1901.

98 Petition for Writ of Error to the Supreme Court of the State of New York.

In the Supreme Court of the United States.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of the New York Central and Hudson River Railroad Company, Plaintiffs in Error,
against
NATHAN L. MILLER, as Comptroller of the State of New York, Defendant in Error.

To the honorable justices of the Supreme Court of the United States:

Come now the said petitioners The People of the State of New York upon the relation of the New York Central and Hudson River Railroad Company by their attorney, and as and by way of complaint of and against the said Nathan L. Miller, as comptroller of the State of New York, respondent, respectfully show to the court:

That the said relator, The New York Central and Hudson River Railroad Company, was during all of the times mentioned in the record herein and is a domestic corporation of the State of New York, organized under the laws of and domiciled within that State, engaged in the business of a common carrier of persons and property between points respectively within that State, and between points respectively within the respective States of New Jersey and Pennsylvania, and between points in either of the said re-
99 spective States and points in either of the others thereof, and between points in either of said States and points in other States and foreign countries, and between points in respective States other than the above, via and over routes extending through and over portions of one or more of the said respectively named States.

That by provision of the tax law of the State of New York, section 180, the tax or license fee of and for domestic corporation organization and existence is imposed, exacted and paid once for all at the threshold of the vesting of corporate power; section 182 thereof provides imposition of an annual franchise tax for and upon the exercise of domestic corporation franchises to be computed as therein provided upon the basis of the amount of corporate capital employed in said State within the tax year; and, section 184 thereof provides imposition of an additional annual franchise tax to be computed upon the basis of the amount of corporate gross earnings within the tax year.

That during the year ending October 31, 1901, for and in respect of which the tax here in question was imposed and exacted, the said relator carried on its said business of a common carrier of persons and property in and by the operation of engines, cars and trains upon and over its owned and leased lines of railroad and lines of railroad upon and over which it had trackage rights, respectively, within the State of New York, and upon and over leased lines of railroad and lines of railroad upon and over which it had trackage rights, respectively, within the respective States of New Jersey and Pennsylvania, upon all whereof it carried persons and property locally between points within the respective States wherein portions of its operated lines of railroad were situate, and between points in those respective States and points in other States.

100 That in and about the carrying on of said transportation business by the said relator large numbers of its cars, though composed of frequently and constantly changing individual cars, passed into or out of the said respective States of New York, New Jersey and Pennsylvania in such wise that at all times a large average number, to wit, many hundreds of the cars of said relator were continuously situate, employed and operated in the States of New Jersey and Pennsylvania, respectively, upon and over railroads there situate, and in so doing were thus operated in the right of and under authority of the franchises in that behalf granted by those respective States and subject unto the burdens imposed and regulations prescribed in and by the laws, rules and ordinances of the respective States, and political subdivisions thereof, wherein the said portion of road was situate and the said transportation service performed.

That the major part of the said relator's said transportation business consisted of such transportation by it upon and over portions of its said operated lines of road of so much of through carriage of persons and property starting or consigned from points outside of the respective States of New York, New Jersey and Pennsylvania and destined to points within said respective States, or *vice versa*, and persons and property starting or consigned from points respectively without either of said States, passing en route through some one or more thereof, and destined to points respectively without either thereof.

That inasmuch as the said transportation service thus performed and rendered by the said relator consisted of operations within the said States of New Jersey and Pennsylvania respectively, they consisted of and inhered in the exercise of franchises granted by

101 those States respectively to corporations created by and domiciled within the said States, respectively, which were thus exercised by relator under and in pursuance of contracts of and for leases of, and contracts of and for trackage rights upon and over, railroads there situate, together with the franchise to maintain and operate the same, granted, remised and accorded by the said corporations created by said respective States to the said relator, and exercised and enjoyed by the said relator in and under authority of

the rights of its respective lessors and under and in pursuance of and subject unto the burdens imposed and regulations prescribed by the said States of New Jersey and Pennsylvania respectively.

That in and by the exercise and performance of the functions thus employed by the said relator in the respective States of New Jersey and Pennsylvania the only such function which it thus exercised under authority of the State of New York was that of its corporate existence, the tax whereon or wherefor is no part of the tax here in question.

That the said franchises thus exercised by the said relator in the respective States of New Jersey and Pennsylvania in and about and in respect of the there operation of its trains and transportation of persons and property were solely those granted and accorded by and under authority of the said respective States wherein the said operations were carried on and conducted, and were altogether and only subject unto regulations prescribed and promulgated by authority of those respective States and by authority of the United States, and not at all by authority of the State of New York.

102 That if and so far as it was within the province and power of the State, as distinguished from the United States, to impose or exact burdens upon or to prescribe regulations for and concerning the exercise by relator of the said franchises of railroad maintenance, train operation and transportation of persons and property, the province and power thereof solely inhered in and pertained to the said respective States of New Jersey and Pennsylvania wherein the said respective railroad was situate and the said franchises were exercised, and not in or to the said State of New York.

That in and about the said relator's train operations and transportation of persons and property upon and over its said operated lines of railroad in the said respective States of New York, New Jersey and Pennsylvania, respectively, in obedience to the requirements of the laws of the United States respecting through transportation from one State to another of carload commodities without reloading or breaking of bulk, and otherwise in conformity with the methods generally observed and followed by common carrier railroad transportation companies within the United States, in the time last preceding and within the said tax year, large numbers of relator's cars of various kinds were from day to day transferred and delivered from relator, and its said operated lines of railroad, in the respective States of New York, New Jersey and Pennsylvania, to, and upon the railroads of and operated by, other common carrier railroad transportation companies foreign to and outside of the State of New York, whereby a large average number of relator's cars, consisting of more or less frequently changing individual cars, were continuously and at any and all times out of the State of New York, and out of the

103 possession, custody and use of the said relator, and in the meantime transferred and delivered, more or less frequently from one to another common carrier railroad transportation corporation, and by them employed outside of the State of New York in

and about their mutual and respective transportation business, foreign to and entirely dissociated from the business of the said relator, and in such wise as rendered it impossible for the said relator to know, be informed or make proof, what, if any, of the said cars, and the extent to which all or any thereof, were employed in transportation business solely within or domestic to any State, or in transportation business between or among the several States, or between the United States and countries or dominions foreign thereto.

That the capital of the said relator invested and employed in the average number of the cars of the relator in manner aforesaid absent from and employed outside of the State of New York in and during the franchise tax year ending October 31, 1901, was in excess of the sum of $16,079,369.25, which said sum stood in such relation to the meantime total capital of said relator that in and by inclusion thereof as subject unto the franchise tax to be computed upon the basis of relator's capital employed within the State of New York, the said franchise tax was augmented and enlarged in and by the sum of $12,015.93.

That the said comptroller of the State of New York in and about the imposition and laying of the said franchise tax upon and against the said relator to be computed upon the basis of the capital of the said relator employed within the State of New York during the said tax year, and the said respective courts in and about their respective final orders and judgments of affirmance of the said tax, imposed and sustained the same computed upon the basis of and in-
104 cluding all of the cars of the said relator, the large average numbers whereof were in manner aforesaid absent from and employed in State and interstate and foreign commerce outside of the State of New York.

And the said petitioners further respectfully show unto the court and complain that in the said record and proceedings had in the above entitled action, (taxes of A. D. 1901), and also in the rendition of the final order and judgment in the said cause, in the supreme court of the State of New York, sitting in Albany county, third judicial department, at the appellate division November term thereof, A. D. 1903, to wit: November 10, 1903, as also in the final order and judgment of the court of appeals of the State of New York, to which last mentioned court the said cause was appealed by said petitioners, being the highest court of law and equity in said State, and the highest such court in which a decision could be had in said cause, to wit; on February 23, A. D. 1904, affirming on appeal the said final order and judgment of the supreme court of the State of New York, in the said cause between the said The People of the State of New York upon the relation of The New York Central and Hudson River Railroad Company, petitioners and plaintiffs in error, and the said Nathan L. Miller, as comptroller of the State of New York, respondent, and defendant in error, in each which supreme court and court of appeals, was drawn in question the validity of a statute of said State, and the validity of an authority exercised by

the said comptroller under said State, on the grounds that (1) they constituted a burden upon and regulation of commerce among the several States as carried on and conducted by the said relator and were thus repugnant to the commerce clause article 1, section 8, of the Constitution of the United States; (2) they impair the
105 obligations of contracts of and with the said relator and were thus repugnant to article 1, section 10 of the Constitution of the United States; and (3) they deprive the said relator of its property and property rights without due process of law and were thus repugnant to the provisions of the fourteenth amendment of the Constitution of the United States; and the decision, final order and judgment of each thereof, the said supreme court and the said court of appeals, was in favor of such their validity; and that in and by and in pursuance of the said decision, final order and judgment of affirmance and order of mandate and remittitur of the said court of appeals of the State of New York, the record and proceedings in said cause were remitted to and now remain in the said supreme court of the State of New York before the justices thereof; and in pursuance thereof and of the statutes of the State of New York in such case made and provided, thereafter, to wit; on March 16, 1904, final order and judgment was rendered by and entered in the supreme court, in said cause, in obedience to and in conformity with the said decision, order, judgment and remittitur of the said court of appeals; in all whereof manifest error hath happened to the prejudice and damage of the said relator, The New York Central and Hudson River Railroad Company.

Wherefore, the said The People of the State of New York upon the relation of The New York Central and Hudson River Railroad Company, petitioners and plaintiffs in error, pray for the allowance of a writ of error, and for such other and further orders and process as may cause the record and proceedings aforesaid, with all things concerning the same, to be sent to the Supreme Court of the
106 United States, that upon final hearing hereof the said error be corrected, and such other and further proceeding be ordered and had as according to law should be done.

And your petitioners will ever pray.

Dated, July 25th, 1904.

IRA A. PLACE,
Attorney for Petitioners, Plaintiffs in Error, Room 417 Grand Central Station, Borough of Manhattan, New York City, N. Y.

THOMAS EMERY, Of Counsel.

STATE OF NEW YORK, }
County of New York, } ss.:

Edward L. Rossiter, being duly sworn, says, that he is an officer of The New York Central and Hudson River Railroad Company, the

petitioner herein, to wit, the treasurer thereof; that the foregoing petition is true to the best of his knowledge and belief.

E. L. ROSSITER.

Sworn to before me this 25th day of July, 1904.

JOHN A. MATTISON,
Notary Public, New York County.

Allowed this — day of July, 1904.

——— ———,
Chief Judge of the Court of Appeals of
the State of New York.

107 [Endorsed:] United States Supreme Court. The People of the State of New York, upon the relation of The New York Central and Hudson River Railroad Company, plaintiffs in error, against Nathan L. Miller, as comptroller of the State of New York, defendant in error. Petition for writ of error. Tax of 1901. Ira A. Place, attorney for plaintiffs in error, Grand Central station, borough of Manhattan, New York city, N. Y. To John Cunneen, Esq. att'y for def't in error Service of a copy of the within petition is hereby admitted this 3 day of Aug. 1904 John Cunneen att'y gen'l att'y for def't in error

108 Copy.

United States Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE NEW York Central and Hudson River Railroad Company, Appellant,
against
NATHAN L. MILLER, as Comptroller, etc., Respondent.

Know all men by these presents, that we, The People of the State of New York *ex rel.* The New York Central and Hudson River Railroad Company, as principal, and The National Surety Company having an office and principal place of business at # 346 Broadway, borough of Manhattan, city of New York, as surety, are held and firmly bound unto Nathan L. Miller, as comptroller etc., above-named, in the sum of five hundred ($500.) dollars to be paid to the said Nathan L. Miller, as comptroller, etc., his executors or administrators, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally and our and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated the 22nd day of July, 1904.

Whereas, the above-named appellant has sued out a writ of error to the United States Supreme Court to reverse the judgment in the above entitled case by the supreme court of the State of New York.

Now, therefore, the condition of this obligation is such that if the

above-named appellant shall prosecute said writ to effect and answer all costs and damages, if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and virtue.

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
By W. H. NEWMAN, President.

Attest:
[L. S.] D. W. PARDEE, Secretary.

NATIONAL SURETY COMPANY,
By JOEL RATHBONE, Res. Vice-President.

Attest:
[L. S.] RICHARD J. MORIARTY,
Res. Ass't Secretary.

109 STATE OF NEW YORK, }
County of New York, } ss.:

On the 22d day of July in the year 1904, before me personally came W. H. Newman to me known who being by me duly sworn did depose and say that he resides in New York; that he is the president of the New York Central and Hudson River Railroad Company, the corporation described in and which executed the within instrument; that he knew the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said corporation, and that he signed his name thereto by like authority.

[L. S.] WILLIAM HUTCHINSON,
Notary Public, # 193, New York County.

110 Copy.

STATE OF NEW YORK, }
County of New York, } ss.:

On this 22nd day of July 1904, before me personally appeared Joel Rathbone res. vice president of the National Surety Company, with whom I am personally acquainted, who being by me duly sworn, said that he resides in the county of New York; that he is the res. vice president of the National Surety Company, the corporation described in and which executed the within instrument; that he knows the corporate seal of said company; that the seal affixed to the within instrument is such corporate seal; that it was affixed by order of the board of directors of said company, and that he signed said instrument as res. vice president of said company by like authority; and that the liabilities of said company do not exceed its assets, as ascertained in the manner provided in section 3, chapter

720 of New York Session Laws of 1893. And the said *Richard J. Moriarty* further said that he is acquainted with Richard J. Moriarty and knows him to be the res. ass't secretary of said company; that the signature of the said Richard J. Moriarty subscribed to the said instrument is in the genuine handwriting of the said Richard J. Moriarty and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said res. vice president.

BELLE F. JAIS,
Notary Public for the County of N. Y., No. 47.

Certificate filed in Kings, Westchester Richmond & Queens counties.

Copy of By-Law.

Be it remembered, that at a regular meeting of the board of directors of the National Surety Company, duly called and held on the 6th day of February, 1900, a quorum being present, the following by-law was adopted:

"ARTICLE XIII, SEC. 1. *Signatures Required.*—All bonds, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, shall be signed by the president, the vice-president, the second vice-president, a resident vice-president, or an attorney in fact, and, except when signed by an attorney in fact, shall have the seal of the company affixed thereto, duly attested by the secretary, an assistant secretary or a resident assistant secretary. The vice-president, second vice-president and resident vice-presidents shall each have authority to sign such instruments whether the president be absent or incapacitated or not; and the assistant secretaries and resident assistant secretaries shall each have authority to seal and attest such instruments, whether the secretary be absent or incapacitated or not. All such instruments executed as herein provided shall be as binding upon the company as if the same were signed by the president, duly sealed and attested by the secretary."

STATE OF NEW YORK, }
County of New York, } ss:

I, Richard J. Moriarty res. ass't secretary of the National Surety Company, have compared the foregoing copy of by-law with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original by-law.

Given under my hand and seal of the company this 22nd day of July 1904.

[L. S.] RICHARD J. MORIARTY,
Res. Ass't Secretary.

111 [Endorsed:] This bond both as to form and sufficiency of surety approved this 28th day of July 1904 Alton B. Parker Ch. J. Approved as to sufficiency Aug. 3d 1904 John Cunneen att'y gen'l. S. T. C.

112 Assignment of Errors.

In the Supreme Court of the United States.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of the New York Central and Hudson River Railroad Company, Plaintiffs in Error,

against

NATHAN L. MILLER, as Comptroller of the State of New York, Defendant in Error.

To the honorable justices of the Supreme Court of the United States:

Come now the said petitioners, plaintiffs in error, and respectfully show to the court that there is in the said record and proceedings manifest error upon which they will rely in and for their prosecution of the writ of error in the above entitled cause, to wit:

I. That the said supreme court of the State of New York erred in rendering, and the said court of appeals of the State of New York erred in affirming the final order and judgment wherein and whereby the provisions of section 182 of the tax law of the State of New York, and the authority exercised thereunder by the comptroller of the State of New York, were held valid in and for franchise taxation of and upon the basis of the capital of the said relator invested and employed in the average number of its passenger, freight, mail, baggage and express cars in obedience to laws of the United
113 States and in due course of business delivered by relator to and employed and used by other common carrier railroad corporations outside of the State of New York in the through carriage of persons and property starting or consigned from the State of New York, New Jersey and Pennsylvania, respectively, and destined to other States, and *vice versa*, and in transportation of persons and property between points in respective States other than and over routes wholly outside of the State of New York, and that such franchise tax did not offend against the commerce clause, article 1, section 8 of the Constitution of the United States.

II. That the said courts, respectively, erred in holding and deciding the said statute valid authority of and for franchise taxation upon the basis of the capital of the said relator invested and employed in the average number of its passenger, freight, baggage, mail and express cars, which in obedience to requirements of the United States statutes, and in the due process of business were transferred and surrendered by said relator to the possession of and used successively and interchangeably by other common carrier railroad

corporations outside of the State of New York in the through carrying of persons and property between points in respective States other than New York State, and over routes outside of that State, all under authority of and in the exercise of franchises granted to them respectively by respective States other than the State of New York, and that franchise tax thus computed and imposed did not impair the obligations of the contracts, arising upon, inhering in and pertaining to the grant and use of the respective franchises whereunder the said cars of relator were thus operated and used outside of the State of New York by common carrier railroad corporations
114 foreign to said State of New York, and hence was not repugnant to article 1, section 10 of the Constitution of the United States.

III. That the said courts, respectively, erred in holding and deciding the said statute valid authority of and for franchise taxation upon the basis of the capital of the said relator invested and employed in the average number of its passenger, freight, baggage, mail and express cars, which in the course of transportation business and in obedience to the requirements of the United States statutes, were by the said relator delivered to corporations foreign to the State of New York, and by such foreign corporations employed and used upon railroads operated by them respectively, in respective States other than New York State in the through carrying of persons and property starting or consigned from points in New York, New Jersey or Pennsylvania, and destined to points outside of either thereof, and *vice versa*, and between points foreign to said several States via and over lines of railroad situate without the State of New York, all in the exercise of and under the authority of franchises granted by the respective States wherein the said operations were so carried on and conducted, and that such franchise tax did not impair the obligations of the contracts pertaining to such use of relator's cars by other corporations, and hence was not repugnant to article 1, section 10 of the Constitution of the United States.

IV. That the said courts, respectively, erred in holding and deciding the said statute valid authority of and for and the exercise thereunder of said authority the valid imposition of franchise taxation in and by the State of New York upon the basis of the
115 capital of relator invested and employed in the average number of its cars which, in obedience to the requirements of the statutes of the United States, were delivered by relator to transportation corporations foreign to the State of New York, and operated and used by them wholly within States other than New York State, under authority of, and in the exercise of franchises granted by such other States, respectively, to corporations created by them, and that the said statute and the said tax imposed under its authority, did not operate to deprive relator of its property or property rights without due process of law, and hence did not contravene the provisions of the fourteenth amendment to the Constitution of the United States.

V. That the said courts, respectively, erred in holding and deciding that franchise taxation prescribed by, and imposed by the said comptroller of the State of New York under the supposed authority of, said statute, upon the basis of relator's capital invested in the average number of its cars by it operated and used in the States of New Jersey and Pennsylvania, respectively, in the transportation of persons and property between points within either of the said respective States, and between points within and points without either thereof, and between points of starting or shipment and points of destination without via and over routes in part within the said respective States, all under authority of and in the exercise of franchises granted by those States, respectively, to corporations created thereby and domiciled therein, and by the latter leased to the said relator, did not burden or regulate interstate or foreign commerce, and hence did not offend against or contravene the provisions of the commerce clause, article 1, section 8 of the
116 Constitution of the United States; and did not impair the obligations of contracts arising upon or inhering such obedience to the commerce laws of the United States, and therein did not contravene article 1, section 10 of the Constitution of the United States.

VI. That the said courts, respectively, erred in holding and deciding the said statute valid authority of and for franchise taxation in and by the State of New York upon the basis of the capital of relator invested and employed in the average number of its cars operated and used by it in the States of New Jersey and Pennsylvania in the exercise of franchises granted by those States, respectively, and leased or remised by the grantees thereof to the said relator, and exercised by it in the carrying of commerce between points respectively within, and between points within and points without those respective States, and that therein and thereby the said statute did not impair the obligations of contracts pertaining to interstate and foreign commerce, and hence did not offend against the provisions of article 1, section 10 of the Constitution of the United States.

VII. That the said courts, respectively, erred in holding and deciding that franchise taxation imposed by the said comptroller of the State of New York under the supposed authority of said statute, upon the basis of the capital of said relator invested in the average number of its cars by it operated and used in the States of New Jersey and Pennsylvania, respectively, in the exercise of franchises granted by those States, respectively, to corporations created thereby and domiciled therein, and by them leased to relator and by it exercised in commerce local to said respective States, as also
117 in commerce between those respective States and other States, did not impair the obligations of the contracts inhering in, arising upon and pertaining to the grant and use of the franchises granted by the said respective States, within their domain, respect-

ively, and hence did not therein offend against the provisions of article 1, section 10 of the Constitution of the United States.

VIII. That the said courts, respectively, erred in holding and deciding the said statute valid authority of and for franchise taxation upon the basis of the capital of the said relator invested and employed in the average number of its cars used wholly outside of the State of New York, in the operation of railroads situate in other States, owned by corporations created by and domiciled within such other respective States, and leased to and operated by the said relator under authority of the franchises of its said respective lessors, granted to them by the said States, respectively, and that such franchise tax did not impair the obligations of the said contracts of lease, and hence was not therein repugnant to article 1, section 10 of the Constitution of the United States.

IX. That the said courts, respectively, erred in holding and deciding the said statute valid authority of and for and the exercise thereunder of said authority the valid imposition of franchise taxation upon the basis of the capital of the said relator invested and employed in the average number of its passenger, freight, baggage, mail and express cars employed and used by relator in the States of New Jersey and Pennsylvania, respectively, upon lines of railroad situate in and built and owned by corporations charte-d by and domiciled in said respective States, and leased by such corporations to and operated by the said relator, in the carrying of State
118 and interstate commerce under and subject unto the franchise granted and regulation prescribed by such respective State wherein the said road is situate, and that such franchise tax did not transcend the territory and power of the jurisdiction of the State of New York and of its said comptroller and did not deprive relator of its property or property rights without due process of law, and hence did not therein contravene the fourteenth amendment of the Constitution of the United States.

X. That the said courts, respectively, erred in holding and deciding the said statute of the State of New York to be valid authority for, and the said authority of the comptroller of the State of New York exercised thereunder to constitute valid imposition of, the said franchise tax imposed and computed upon the basis of the capital of the said relator invested and employed in the average number of its cars, which, having in obedience to the requirements of the laws of the United States passed out of the State of New York and out of the possession, custody and control of the said relator, were operated and used by railroad corporations created by other States upon their railroads there situate, under authority of franchises granted by such other States, respectively, in common carrier transportation local to said respective States and between those and other States, and that such franchise tax thus computed and imposed did not constitute a burden upon or regulation of commerce among the several States, and did not impair the obligations of the contracts under which in obedience to the laws of the United States the said

relator transferred and surrendered, and the said respective
119 foreign corporations in turn directly or remotely acquired possession and custody of and used the said cars of said relator, and did not impair the obligations of the contracts inhering in, arising upon and incident to the grant and use in such other States of the franchises granted by them, respectively, and did not derogate from the dignity of such other States or otherwise transcend the territory or power of the jurisdiction of the State of New York or of its said comptroller, and hence that the said franchise tax thus computed and imposed did not offend against and was not violative of or repugnant to either article 1, section 8, or article 1, section 10 or the fourteenth amendment of the Constitution of the United States.

XI. That the said courts, respectively, erred in holding and deciding the said statute of the State of New York to be valid authority for, and the said authority of the comptroller of the State of New York exercised thereunder to constitute valid imposition of the said franchise tax computed and imposed upon the basis of the capital of the said relator invested and employed in the average number of its cars operated and used in the States of New Jersey and Pennsylvania, respectively, upon lines of railroad situate therein, built, maintained and operated under authority of franchises granted by those respective States to corporations created thereby, and domiciled therein, and under leases or grants of trackage rights of railroad and accompanying franchise demised or let by the said owning corporations to the said relator, and thus operated and used in and about common carrier transportation local to the said States of New Jersey and Pennsylvania, respectively, and between those respective States and other States of the United States and dominions foreign
to the United States, and that such franchise tax thus com-
120 puted and imposed did not constitute a burden upon or regulation of commerce among the several States or foreign commerce, or commerce within and domestic to such respective State, and did not impair the obligations of the contracts inhering in, arising upon and incident to the grant and use in such respective States of New Jersey and Pennsylvania of the franchises granted by them respectively, or of the contracts of lease and agreements of and for trackage rights whereby and whereunder the said owning corporations granted, demised and let the said property and property rights and franchises to relator and relator thus operated in the said respective States under authority thereof and of said franchises, and did not derogate from the dignity of such respective State or thus or otherwise transcend the territory or power of the jurisdiction of the State of New York or of its said comptroller, and hence that the said franchise tax thus computed and imposed did not contravene or offend against and was not violative of or repugnant to either article 1, section 8, or article 1, section 10, or the fourteenth amendment of the Constitution of the United States.

XII. That the said courts, respectively, erred in so holding and deciding as therein and thereby to uphold and sustain the validity

of the said statutory provisions and of the authority of the said comptroller of the State of New York exercised thereunder in the said computation and imposition of the said franchise tax as not constituting a burden upon or regulation of commerce domestic to and within States other than the State of New York, as not constituting a burden upon or regulation of commerce among the several States or with foreign countries, as not impairing the obligations of contracts arising upon and pertaining to commerce within and domestic to States other than the State of New York, as not impairing the obligations of contracts arising upon or pertaining to commerce among the several States and with foreign countries, as not impairing the obligations of contracts arising upon and pertaining to the grant of franchises by and the exercise and use thereof within States other than the State of New York, as not derogatory — the dignity of a *stater* State, as not transcending the territory or power of the jurisdiction of the State of New York or of its said comptroller, and as not depriving the said relator of its property or property rights without due process of law, and hence denying to the said relator the relief, order and decree herein prayed for, and in rendering judgment against them for costs and disbursements in the said cause and proceeding.

121

XIII. That the said courts, respectively, erred in holding and deciding in favor of the validity of the said statute of the State of New York, and the authority of the said comptroller of the State of New York by him exercised thereunder, and consequent thereupon that the said petitioners, plaintiffs in error, were disentitled to have and maintain their said cause and proceeding and to have the relief, order and decree therein and thereby prayed for.

XIV. That the said courts, respectively, erred in holding and deciding in favor of the validity of the said statute of the State of New York and of the said authority exercised thereunder, whereby the said franchise tax was in manner aforesaid computed and imposed, as not repugnant to the Constitution of the United States, and consequent thereupon denying to said relator the relief, order and decree prayed for in its complaint in said cause.

122

XV. That the said courts, respectively, erred in that their said respective final order and judgment were for and in favor of the said respondent, defendant in error, as comptroller of the State of New York, when the same should have been for and in favor of the said petitioners.

The said petitioners, plaintiffs in error, pray judgment that the said final order and judgment aforesaid be in all things reversed, set aside and held for naught, and the said relator may be restored to all things which it has lost by occasion thereof.

IRA A. PLACE,
Attorney for Plaintiffs in Error.

THOMAS EMERY, Of Counsel.

123 [Endorsed:] United States Supreme Court. The People of the State of New York, upon the relation of The New York Central and Hudson River Railroad Company, plaintiffs in error, against Nathan L. Miller, as comptroller of the State of New York, defendant in error. Assignment of errors. Tax of 1901. Ira A. Place, attorney for plaintiffs in error, Grand Central station, borough of Manhattan, New York city, N. Y. To John Cunneen, Esq., att'y for def't in error. Service of a copy of the within assignment of errors is hereby admitted this 3 day of Aug., 1904. John Cunneen, att'y gen'l, att'y for def't in error. S. T. C.

124 Citation.

UNITED STATES OF AMERICA, *ss*:

To Nathan L. Miller, as comptroller of the State of New York, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of New York for the county of Albany, wherein The People of the State of New York, upon the relation of The New York Central and Hudson River Railroad Company, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 28th day of July, in the year of our Lord one thousand nine hundred and four.

ALTON B. PARKER,
Chief Judge of the Court of Appeals of the
State of New York.

125 [Endorsed:] United States Supreme Court. The People of the State of New York, upon the relation of The New York Central and Hudson River Railroad Company, plaintiffs in error, against Nathan L. Miller, as comptroller of the State of New York, defendant in error. Citation. Tax of 1901. Ira A. Place, attorney for plaintiffs in error, Grand Central station, borough of Manhattan, New York city, N. Y. To John Cunneen, Esq., att'y for def't in error. Service of a copy of the within citation with notice of allowance is hereby admitted this 3 day of Aug. 1904. John Cunneen att'y gen'l att'y for def't in error.

126 Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of New York, possessors of the return and record in the action in which The People of the State of New York upon the relation of The New York Central and Hudson River Railroad Company are plaintiffs and Nathan L. Miller, as comptroller of the State of New York, is defendant, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea in the court of appeals of the State of New York, wherein final judgment upon return from the supreme court of the State of New York was rendered March 16, 1904, that being the highest court of law and equity of the said State in which a decision could be had in the suit or action between The People of the State of New York, upon the relation of The New York Central and Hudson River Railroad Company, plaintiffs in error, and Nathan L. Miller, as comptroller of the State of New York, defendant in error, and which had been remitted to said supreme court for execution and is now before you or some of you in said court; wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of such their validity, a manifest error hath happened to the

127 great damage of the said, The New York Central and Hudson River Railroad Company, as by its complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the said Supreme Court, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 2nd day of August, in the year of our Lord one thousand nine hundred and four.

W. S. DOOLITTLE,
Clerk of the United States Circuit Court
for the Northern District of New York,
By C. W. HIGGISON, Deputy.

[SEAL.]

Allowed by—
ALTON B. PARKER,
Chief Judge of the Court of Appeals
of the State of New York.

STATE OF NEW YORK, }
County of Albany, Clerk's Office, } *ss*:

I, John Franey, clerk of the said county, and also clerk of the supreme and county courts, being courts of record held therein, do hereby certify that I have compared the annexed copies of writ of error; citation: assignment of error: bond; petition for writ of error; order & judgment; opinion; memoranda of opinion and papers on appeal from order, with the originals thereof, filed in this office on the 3rd day of August, 1904, and that the same are correct transcripts therefrom, and of the whole of said originals.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 3rd day of August, 1904.

[Seal Albany County, July, 1847.]

JOHN FRANEY, Clerk.

128 [Endorsed:] United States Supreme Court. The People of the State of New York, upon the relation of The New York Central and Hudson River Railroad Company, plaintiffs in error, against Nathan L. Miller, as comptroller of the State of New York, defendant in error. Writ of error. Tax of 1901. Ira A. Place, attorney for plaintiffs in error, Grand Central station, borough of Manhattan, New York city, N. Y. To John Cunneen, Esq. att'y for def't in error Service of a copy of the within writ of error, with notice of allowance, is hereby admitted this 3 day of Aug. 1904 John Cunneen att'y gen'l att'y for def't in error. S. T. C.

Endorsed on cover: File No. 19,445. New York supreme court. Term No. 82. The People of the State of New York upon the relation of The New York Central & Hudson River Railroad Company, plaintiff in error, *vs.* Nathan L. Miller, as comptroller of the State of New York. Filed August 16, 1904. File No. 19,445.